



House of Commons
Committee of Public Accounts

Off-payroll arrangements in the public sector

Twelfth Report of Session 2012–13

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

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The Committee Name

The Committee of Public Accounts is appointed by the House of Commons to examine “the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit” (Standing Order No 148).

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The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pac. A list of Reports of the Committee in the present Parliament is at the back of this volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee is Adrian Jenner (Clerk), Sonia Draper (Senior Committee Assistant), Ian Blair and James McQuade (Committee Assistants) and Alex Paterson (Media Officer).

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Summary

The public sector must itself maintain the highest standards of propriety in its employment practices if it is to show leadership in the fight against tax avoidance. It must avoid the practice of using off-payroll arrangements for staff who should be on the payroll—a practice which generates suspicions of complicity in tax avoidance and which fails to meet the standards expected of public officials. Those whose income is derived from monies raised through taxation have a particular obligation to make sure that they do not use tax avoidance schemes.

In May 2012 HM Treasury published its report on the use of off-payroll arrangements in central government, which showed that over 2,400 staff, each earning more than £58,200 a year, were being paid ‘off-payroll’. We consider that the report’s recommendations should go some way to reducing the prevalence of the practice.

However, the Treasury Review was limited in scope to central government and did not cover other public services, like Local Government, the NHS and the BBC. We still do not fully know how endemic the use of personal service companies is in other parts of the public sector. The Local Government Association does not consider the practice to be widespread in local authorities but does not have accurate data. The BBC told us that short term engagements are commonplace in the broadcast industry, and that it paid about 25,000 people off-payroll in a year. However, it acknowledged that the contracts of presenters employed through personal service companies can often share the characteristics of typical PAYE contracts.

The Treasury Review followed media stories about the appointment of the Chief Executive of the Student Loans Company, and his payment through a personal service company. There was a catalogue of errors across government in this case, involving the Department for Business, Innovation and Skills, the Student Loans Company, HM Revenue & Customs, the Treasury and the Cabinet Office, with none of the bodies involved properly challenging the terms of the appointment and the associated tax arrangements.

Whilst we welcome the speed with which the Government acted, doubts about their proposals remain. The Treasury Review states that off-payroll arrangements can be used in ‘exceptional circumstances’ but the Review does not clarify what these exceptional circumstances are. In addition, the Treasury Review recommended that departments seek assurance that those staff who remain off-payroll are paying the appropriate amount of tax, but did not specify how departments could or should do this.

Ultimately, whether those paid off-payroll are paying the right amount of tax is dependent on HM Revenue & Customs properly enforcing the tax rules that ensure employees, regardless of whether or not there is a personal service company, pay tax as employees. However, HM Revenue & Customs has progressively reduced its enforcement of the legislation designed to eliminate the avoidance of tax and National Insurance Contributions through the use of intermediaries, such as personal service companies, putting at risk any deterrent effect the rules might have on tax avoidance. In 2010-11, only 23 investigations took place; down from over 1,000 in 2003-04.

On the basis of a Report by HM Treasury,¹ we took evidence from the BBC, Local Government Association, HM Treasury, Cabinet Office, HM Revenue & Customs and the Department for Business, Innovation and Skills on the use of personal service companies in the public sector.

1 HM Treasury, *Review of the tax arrangements of public sector appointees*

Conclusions and recommendations

- 1. Too many public sector staff have been paid using off-payroll arrangements for too long.** The use of off-payroll arrangements for permanent employees generates suspicions of tax avoidance, places value for money at risk, and fails to meet the standards expected of public officials. We welcome the fact that the Treasury moved quickly to carry out a review, following revelations about the Chief Executive of the Student Loans Company. It was shocking to find that over 2,400 central government appointees are paid off-payroll, though it is encouraging to hear that, since the Review, at least some of these off-payroll arrangements have come to an end. Our recommendations are designed to further reduce the scope for any abuse of the off-payroll arrangements in the public sector.
- 2. The appointment of the Chief Executive of the Student Loans Company through a personal service company should not have gone unchallenged by any part of government.** The Student Loans Company and the Department for Business, Innovation and Skills paid too little attention to the need for its officials to uphold the highest standards in public life, and produced a flawed case for paying the Chief Executive off-payroll. However, also of concern is the fact that HM Treasury, Cabinet Office and HM Revenue & Customs all failed to properly challenge the appointment, giving the appearance of endorsing the use of off-payroll tax arrangements. The Treasury and Cabinet Office should ensure that controls over the appointments of senior officials include an assessment of the full cost of the appointment to the Exchequer and the propriety of the tax arrangements.
- 3. It remains unclear how prevalent the use of inappropriate off-payroll arrangements is beyond central government.** The Treasury Review only looked at central government and its arm's length bodies, so did not include local government, public corporations, publicly owned banks or the NHS below board level. In addition, the review only included those who earned more than £58,200 in 2011-12. We do welcome the Treasury's assurance to us that the recommendations would be implemented across the NHS. The Treasury, working with other departments, should establish how widespread the practice is in all parts of the public sector, including entities not covered by Managing Public Money such as local government, and use its powers to ensure that public servants are not employed through arrangements which could lead to tax avoidance.
- 4. The BBC has identified 25,000 off-payroll contracts, including 13,000 contracts for 'talent', but cannot provide any assurance that these individuals are paying the correct amount of tax.** The BBC told us that the use of freelance workers is a key part of their business model. However, the BBC accepted that many of its contracts with presenters who are paid through personal service companies could share the same features as typical PAYE employment contracts. Although the BBC told us it provides information on its off-payroll arrangements to HM Revenue & Customs, it has no means of ensuring that its freelancers are paying the right amount of tax. The BBC told us that it would be carrying out a detailed review of its off-payroll arrangements. The BBC's review should specifically consider whether the contracts

resemble typical employment contracts, their duration and the number of repeat contracts, and the salaries involved. The review should set out how it will gain assurance that its staff pay the right level of income tax and national insurance on their income.

- 5. There is insufficient clarity on how government will implement the Treasury Review's recommendations.** The Treasury has not defined what constitutes the 'exceptional circumstances' under which an Accounting Officer may still approve the use of personal service companies. There is a risk that Treasury guidance may be interpreted inconsistently across the public sector and the mistakes of the Student Loans Company case could be repeated. The Treasury has also not set out how departments should seek assurance that those using personal service companies are paying the right amount of income tax and national insurance on income they receive from the public purse. The Treasury should clearly define what it means by 'exceptional circumstances', require Accounting Officers to seek Treasury approval of any such exceptions, and require departments to pass on information they gather about the tax arrangements of their off-payroll staff to HM Revenue & Customs to inform investigations and compliance work.
- 6. The deterrent effect of anti-avoidance legislation has been placed at risk by the reduction in the number of investigations by HM Revenue & Customs.** 'IR35' legislation is designed to eliminate the avoidance of tax and National Insurance Contributions through the use of intermediaries, such as personal service companies. The number of IR35 investigations has decreased significantly from over 1,000 in 2003-04 to just 23 in 2010-11, undermining the IR35 system as an effective deterrent to tax avoiders. We welcome HM Revenue & Customs' intention to increase this to at least 230 a year and to carry out a risk-based review of the 2,400 cases found in the Treasury's Review and the 25,000 cases identified by the BBC. HM Revenue & Customs should report the outcome of its review to us in three months' time, and should set an optimum number of IR35 investigations that maintains an effective deterrent, including any arising from information passed to it by public bodies.
- 7. The public sector's dependence on interim staff reflects a lack of specialist and professional skills within government.** It has been recognised for some time that the civil service lacks programme and project management and IT skills, and the frequent use of interims in these areas presents a risk to value for money. We have twice recommended in recent years that government should plan its long terms skills needs, identify core skills gaps and develop the capabilities to meet the skill requirements. The Cabinet Office should demonstrate how the Civil Service Reform Plan will address the issues the key skills gaps that remain prevalent in government.

1 The extent and nature of off-payroll arrangements

1. Off-payroll arrangements are those where individuals, either self-employed or acting through a personal service company, are paid gross by the employer. While off-payroll arrangements may sometimes be appropriate in the public sector for those engaged on a genuinely interim basis, they are not appropriate for those in management positions or those working for a significant period with the same employer. Such arrangements reduce transparency and can be perceived as an endorsement of tax avoidance.

2. The public sector must maintain the highest standards of propriety in its employment practices if it is to show leadership in the fight against tax avoidance. It must therefore avoid the practice of using off-payroll arrangements for staff who should be on the payroll, because it fails to meet the standards expected of public officials. HM Treasury's rules are clear that public organisations should avoid the use of tax avoidance schemes.² However, the growth in the use of personal service companies across the public sector shows that these rules have been neglected in recent years.

3. The issue of the use of off-payroll tax arrangements in the public sector came to prominence following investigations by the press and the release of information by the Department for Business, Innovation and Skills and the Student Loans Company, following a Freedom of Information request, about the appointment of the Chief Executive of the Student Loans Company. The Chief Executive was appointed as interim Chief Executive in May 2010, and was reappointed on a 2-year contract in December 2010, following a competitive recruitment process. Both appointments were made through a recruitment agency and the Chief Executive's personal service company.

4. There were a number of errors across government which led to the appointment of the Chief Executive of the Student Loans Company.³ The information released under the Freedom of Information Act points to the Student Loans Company and the Department for Business, Innovation and Skills having pushed for the Chief Executive to be appointed using the off-payroll arrangements. They paid too little attention to the need for officials to uphold the highest standards in public life. The Department received expert tax advice that the Chief Executive should be employed on the books, rather than through a personal service company. The Department could not explain to us why that advice became any less relevant once it was clarified that the 'employment' relationship would be with the Student Loans Company itself, as opposed to the Department.⁴ In addition, the business case presented to the Treasury, which compared the cost of appointing the Chief Executive on the payroll or through the personal service company was flawed, particularly because it did not take into account the potential for lost tax revenue to the Exchequer from not putting him on the payroll. HM Treasury, the Cabinet Office and HM Revenue & Customs

2 HM Treasury, *Managing Public Money* http://www.hm-treasury.gov.uk/d/tax_pay_appointees_review_230512.pdf

3 Q 109

4 Qq 114-116, 121-130

approved the arrangements without considering the broader tax implications.⁵ The failure of these departments to properly challenge the appointment gave the appearance of them endorsing the use of off-payroll tax arrangements.

5. Following media reports about the case of the Chief Executive of the Student Loans Company, the Chief Secretary to the Treasury commissioned a review of the extent of off-payroll arrangements in central government. The Treasury Review found 2,400 off-payroll engagements with staff earning more than £58,200 a year in central government departments and their arm's length bodies. Around 85% of the 2,400 engagements had been for longer than six months, 40% for longer than two years and 1% for longer than 10 years. In addition, around 5% of cases related to senior management positions.⁶ HM Treasury described the Review as a wake-up call for government.⁷

6. The Review was limited in scope to central government and it is still unclear how endemic the use of personal service companies is in other parts of the public sector, including the NHS below board level, public corporations like the BBC and local government. The Local Government Association, which we acknowledge was invited to attend our hearing at short notice, could not provide us with definitive numbers. However, the Local Government Association told us that returns from seven out of the nine regional employers had identified only 13 people nationally, employed on personal service contracts for more than £50,000 a year. We are sceptical about these numbers given reports about numbers within individual local authorities. The Local Government Association told us that, even if 13 did prove to be a significant under-estimate, it did not consider that the practice was endemic.⁸

7. The BBC told us that it employs around 20,000 people who are on the BBC payroll and that in addition, in a typical year, it employs around 25,000 people using off-payroll arrangements, comprising around 12,000 off-air staff and 13,000 on-air talent. It has 3,000 personal service company contracts.⁹ The BBC explained that the nature of the broadcast industry, which often requires production staff to work for short periods on programmes while also being free to take employment for other production companies, means that off-payroll arrangements are an important part of the BBC's business model.¹⁰ However, 148 of its 467 presenters are employed by the BBC through personal service companies, despite them often being employed long-term, and the BBC acknowledged that their contracts can share characteristics with typical PAYE contracts.¹¹

5 Qq 109-110, 113-118, 136

6 HM Treasury, *Review of the tax arrangements of public sector appointees*, http://www.hm-treasury.gov.uk/d/tax_pay_appointees_review_230512.pdf

7 Q 209

8 Qq 9-13

9 Qq 23-25, 96

10 Q28

11 Qq 44-50, 86-90

2 Addressing the use of off-payroll arrangements

8. HM Treasury told us that, following its Review “the days of tax planning in the public sector are over.”¹² However, while the Treasury Review’s recommendations go some way to reducing the prevalence of off-payroll arrangements in the public sector, they need to be strengthened in some areas. HM Treasury told us that it will review the data on the use of off-payroll arrangements in the public sector in a year’s time, and that if there are still lots of outstanding cases, the Government will need to introduce more stringent controls.¹³

9. The BBC told us that it had reviewed its 3,000 engagements with individuals using personal service companies as a result of the Treasury Review. The Treasury told us that every foundation trust and commissioning body in the NHS will also be covered by the rules set out in the Treasury Review.¹⁴

i. The Treasury Review recommends that:

“board members and senior officials with significant financial responsibility should be on the organisation’s payroll, unless there are exceptional circumstances—in which case the Accounting Officer should approve the arrangements—and such exceptions should exist for no longer than six months”¹⁵

While we welcome this recommendation, the Review does not specify what these ‘exceptional circumstances’ might be. This leaves us concerned that there is still too much scope for departments to interpret the rules differently, and could leave open the risk of another case such as that of the Student Loans Company’s Chief Executive.¹⁶

ii. The Review also recommends that:

“engagements of more than six months in duration, for more than a daily rate of £220, should include contractual provisions that allow the department to seek assurance regarding the income tax and NICs obligations of the engagee—and to terminate the contract if that assurance is not provided.”¹⁷

10. However, the Review does not clearly set out how departments should gain assurance that those using personal service companies are paying the right amount of income tax and national insurance on income they receive from the public purse. Without clear guidance departments may choose not to seek that assurance, or consider that it is someone else’s

12 Q 209

13 Q 209

14 Qq 96, 202-204

15 HM Treasury, *Review of the tax arrangements of public sector appointees*, http://www.hm-treasury.gov.uk/d/tax_pay_appointees_review_230512.pdf

16 Qq 121-128, 205-209

17 HM Treasury, *Review of the tax arrangements of public sector appointees*, http://www.hm-treasury.gov.uk/d/tax_pay_appointees_review_230512.pdf

responsibility. For example, the BBC told us that it provides information on payments to personal companies to HM Revenue & Customs, but that it does not know whether the right tax has been paid, or whether HM Revenue & Customs has questioned the tax arrangements, because that is private information between the personal service company and HM Revenue & Customs.¹⁸

11. Under 'IR35' legislation, HM Revenue & Customs has the power to challenge whether those using personal service companies are paying the correct tax and National Insurance Contributions. HM Revenue & Customs told us that there is a deterrent effect from the very existence of the IR35 legislation. In recent years, however, the number of IR35 investigations that HM Revenue & Customs carries out has decreased significantly from over 1,000 in 2003-04 to only 23 in 2010-11. The lack of investigations by HM Revenue & Customs undermines any deterrent effect of the legislation.¹⁹

12. HM Revenue & Customs plans to increase the number of IR35 investigations it carries out 10-fold in the next year.²⁰ In addition, HM Revenue & Customs is carrying out a risk-based review of the tax arrangements of the 2,400 off-payroll engagements identified in the Treasury Review, and told us that it will look at the BBC's payments through personal service companies.²¹

13. The Cabinet Office told us that part of the reason for 2,400 individuals earning over £58,200 being paid off-payroll is that the Civil Service has not developed sufficient skills in house, producing an over-reliance on interim staff and consultants. The Treasury, meanwhile told us that the challenge is to build and retain in-house capacity, which requires far more careful development and management focus on how you retain talented staff.²² The Treasury told us that it is in Whitehall's interest to have people in senior posts who are there for a reasonable length of time, not least so that this Committee can hold them to account. However, Permanent Secretaries seem to move from department to department too frequently, with 75% of those in post at the time of the 2010 General Election no longer in post.²³

14. While there is evidence of increased professionalism in some areas, such as finance, programme management and IT skills are still in particularly short supply in the Civil Service, as shown by the scarcity of successful government projects that we hear about.²⁴ We heard that steps are being taken to improve project management skills, including the establishment of a major projects academy by the Major Projects Authority. In addition, the recently published Civil Service Reform Plan touches on capability issues and we were told that a five-year capability plan looking at skills deficits, including those in project and programme management will be published in the Autumn.²⁵

18 Qq 27, 58-60, 95

19 Qq 140-142

20 Qq 140-143

21 Qq 191-192

22 Q175

23 Qq 177-180

24 Qq 173-175

25 Qq 173, 194

Formal Minutes

Monday 17 September 2012

Members present:

Rt Hon Margaret Hodge, in the Chair

Mr Richard Bacon
Jackie Doyle-Price
Chris Heaton-Harris
Meg Hiller
Mr Stewart Jackson

Fiona Mactaggart
Mr Austin Mitchell
Ian Swales
James Wharton

Draft Report (*Off-payroll arrangements in the public sector*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 14 read and agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the Twelfth 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 (in addition to that ordered to be reported for publishing on 5 September 2012).

[Adjourned till Tuesday 18 September at 10.00 am

Witnesses

Monday 16 July 2012

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Zarin Patel, Group Finance Director, **David Smith**, Head of Employment Tax, BBC and **Carolyn Downs**, Chief Executive, Local Government Association Ev 1

Sir Nicholas Macpherson, Permanent Secretary, HM Treasury, **Lin Homer**, Permanent Secretary, HM Revenue and Customs, **Howard Orme**, Director General Finance, Department for Business, Innovation and Skills and **William Hague**, Executive Director of HR Policy, Efficiency and Reform Group, Cabinet Office Ev 11

List of printed written evidence

1	BBC	Ev 22:29
2	HM Revenue and Customs	Ev 23:33
3	Department for Business, Innovation and Skills	Ev 33
4	Home Office	Ev 35
5	Local Government Association	Ev 37

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 2012–13

First Report	The Government Procurement Card	HC 1915
Second Report	Mobile Technology in Policing	HC 1863
Third Report	Efficiency and reform in government corporate functions through shared service centres	HC 463
Fourth Report	The completion and sale of High Speed 1	HC 464
Fifth Report	The Regional Growth Fund	HC 104
Sixth Report	HM Revenue & Customs: Renewed Alcohol Strategy	HC 504
Seventh Report	Immigration: The Points Based System – Student Routes	HC 101
Eighth Report	Managing early departures in central government	HC 503
Ninth Report	Preparations for the London 2012 Olympic and Paralympic Games	HC 526
Tenth Report	Implementing the transparency agenda	HC 102
Eleventh Report	Improving the efficiency of central government office property	HC 288

Oral evidence

Taken before the Committee of Public Accounts on Monday 16 July 2012

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon
Stephen Barclay
Jackie Doyle-Price
Matthew Hancock
Chris Heaton-Harris

Meg Hillier
Stewart Jackson
Fiona Mactaggart
Nick Smith

Amyas Morse, Comptroller and Auditor General, National Audit Office, **Gabrielle Cohen**, Assistant Auditor General, NAO, **Steve Corbishley**, Director, NAO, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Examination of Witnesses

Witnesses: **Zarin Patel**, BBC Group Finance Director, **Carolyn Downs**, Chief Executive, Local Government Association, and **David Smith**, BBC Head of Employment Tax, gave evidence.

Q1 Chair: Thank you all for agreeing to attend. Normally this initial session is a short one, but today we are in slightly different circumstances. We have asked you both to attend because you have not been covered by the review undertaken by the Treasury for Danny Alexander. I will start with local government and then we will move to the BBC—we are hoping to keep this quite tight—then we will move on to a discussion with the Treasury and other officials on the Treasury review.

Starting with local government and Carolyn Downs: is anybody in the LGA employed on a personal service contract?

Carolyn Downs: I think we no longer have anybody. We did have two people earlier this year, but we employ everybody on an interim basis now directly, wherever we can.

Q2 Chair: “I think” and “where we can” is almost—do you or don’t you?

Carolyn Downs: We have what we call associates. They are consultants who are not directly employed by us, but they are not people who are covering permanent positions.

Q3 Chair: How do you define a permanent position?

Carolyn Downs: A permanent position is a job that would be on the general payroll of the organisation, so it is a job for which there is a permanency required—we always require that job to be undertaken. We employ associates who are experts in particular fields. They may work for a couple of hours a week. They may sometimes work for two or three days a week, or they may be doing a specific one-off project where you would not want to employ somebody permanently. In terms of covering our permanent establishment, we do not employ people on these contracts.

Q4 Chair: You do not employ people. You would not have a permanent housing adviser to the LGA

employed on a personal service contract. If they have been advising the LGA for the last two years or six months—let us say more than six months—I would classify that as pretty permanent.

Carolyn Downs: We may have somebody who is employed to do that on specific projects, or somebody who is employed one or two hours a week. We also employ permanently our payroll housing advisers—all kinds of policy advisers—but they are on our permanent establishment. We employ them directly. We employ specialists, but they work irregular hours for us.

Q5 Chair: If we turn to local government generally—I appreciate you cannot speak for every council—are councils now required to review their use of personal service contracts?

Carolyn Downs: Yes—

Chair: Required?

Carolyn Downs: Every council is now required to publish an annual pay policy. I have two examples with me today: Hertfordshire county council and Trafford metropolitan borough council. Every year, members of the council—the politicians—are expected to review the pay policy. Within both these policies, it includes specifically this issue, so Trafford states: “Where the Council is unable to recruit Chief Officers, or there is a need for interim support...the Council will, where necessary, consider engaging individuals under a ‘contract for service’. These will be sourced through a relevant procurement process ensuring the council is able to demonstrate the maximum value for money benefits from competition in securing the relevant service.” All of that now has to be published for councils.

Q6 Chair: Let us go into the detail. Do you, on behalf of local government, accept the premise, which appears to be accepted here in Parliament by all political parties, that if you are in a job that is funded by the taxpayer, you have a moral duty that may go

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beyond a legal obligation to ensure that you employ people in such a way that they contribute through PAYE and national insurance contributions back to the public purse? Do you and your members accept that?

Carolyn Downs: I would say very largely yes, but I think—

Chair: Very largely?

Carolyn Downs: I was going to say because I believe there are circumstances in which you may wish to employ somebody as a consultant, but, for the permanent employees, I accept that that has cross-party agreement, yes.

Q7 Matthew Hancock: Can I push you a bit more on these exceptional circumstances? Can you describe what is an acceptable exceptional circumstance?

Carolyn Downs: Yes. For example, if a council lost its chief executive overnight, which can and does happen, and the council needed to bring in a chief executive immediately, it would be appropriate, both in my view and, I am sure, in the view of councillors, to use an interim in that very short circumstance before you go through the recruitment process to put someone in permanently.

Q8 Matthew Hancock: For a period of up to how many months?

Carolyn Downs: I personally think that you should be able to recruit within a period of six months. There will be very few cases in local government where it would go beyond a six-month period.

Q9 Chair: As I understand it, Barnet council has nine people on personal service contracts. Is that right?

Carolyn Downs: I cannot comment specifically on Barnet council. Over £50,000 a year is the remit I was asked to look at. We asked all the regional employers—there are nine—to find out exactly how many local government people were employed on a personal service contract above £50,000, rather than £58,000. From the seven regional employers that responded to us, there are 13 nationally. I am struggling if Barnet has seven—

Q10 Chair: Was London one of the ones? Barnet, and Hammersmith and Fulham, are two that have constantly been identified as having a large number of people on personal service contracts.

Carolyn Downs: Hammersmith and Fulham did indeed have an issue. Since that was brought to their attention, they have now brought in a very detailed and rigorous procedure to ensure that that no longer happens.

Q11 Chair: And Barnet?

Carolyn Downs: I cannot comment on Barnet, I am sorry.

Q12 Chair: But did Barnet respond to your survey?

Carolyn Downs: The London employers—I personally asked them on Friday and I got nothing back from Barnet to say that they employ personal services. I just cannot comment for them.

Q13 Chair: So, you had seven regional people reply, but they may not have covered all the authorities in their area.

Carolyn Downs: Well, they will largely have done so. I was asked to come here a week ago, so I did whatever I could in that week.

Chair: Thank you; I am very grateful.

Carolyn Downs: Let me put it in context. There are 1.6 million employees in local government—that is employees rather than full-time contracts. Of those, 19,950 are paid over £50,000 a year, and, of those, 13 were brought to our attention. Even if you times that by three, that comes to 39 which, out of 19,950 and, again, out of 1.6 million, would not under any circumstances give the impression that this was systemic or endemic in the system. Furthermore, every single council has had FOI requests into them about this very matter since it was made much more public earlier this year. My view is that if this was completely awash throughout the system, you would be inundated with that in the press, both national and local, and that is not the case.

Q14 Chris Heaton-Harris: Were any of the people who were identified chief executives?

Carolyn Downs: Not permanent chief executives, but interim ones—without a doubt.

Q15 Mr Bacon: What is the longest period of time?

Carolyn Downs: There was nobody over a year from the 13 that were highlighted to us. The overwhelming majority were under six months.

Q16 Chris Heaton-Harris: Have you got their job titles there?

Carolyn Downs: I have not personally got them here. The employers were keen to ensure that the individuals were not identified, but I would be able to provide you with the kind of job titles.

Q17 Chair: Given that Barnet has been identified—I am glad to hear about Hammersmith and Fulham—it would be really helpful if you, in co-operation with Barnet council, could provide the Committee with information on its current status and on how many people it has on personal service contracts.

Carolyn Downs: I will do that.

Q18 Mr Bacon: Not just its current status, but how it has been over the past two years or so. If it has changed recently because it knew that we were doing this inquiry, we would like to know when it changed.

Carolyn Downs: Yes, okay, and what systems it has put in place if it has changed—absolutely.

Q19 Chris Heaton-Harris: I wonder whether you have done any research into how many local government authorities are using contractors for positions that were previously filled by long-term employees.

Carolyn Downs: I have not got that figure. For people who were full-time employees and those posts that have been taken off the establishment?

Chris Heaton-Harris: Yes.

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Carolyn Downs: Although I cannot evidence it—I do not have that information—I very much imagine that some people will be employed to do part-time roles, a few hours or specific projects, as opposed to being employed full time. I have to say that we do not agree about the tax avoidance issue, but local government does have a duty to ensure that we have the best value for the taxpayer and the public purse in the round, particularly if we have Government grants and projects that come to an end over a specific period. Those require a high level of expertise going into them, with the Government grant specifically saying, “We are not prepared to pay for the termination of contracts at the end”; then local government will definitely use on contract people who are self-employed or who come through a personal service company, because that is the best value that they can get for the local taxpayer.

Q20 Chris Heaton-Harris: Just over the past few years, have you seen more and more contractors working for local government, rather than people being full time, on the establishment figure?

Carolyn Downs: Not that I am aware, because there is so much accountability and transparency about everything that we do. Last time I was here, I think I was talking about every single contract payment over £500—that has now gone to £250 in local government, across the board. So every single contracted payment will be published monthly on the council’s website. That level of accountability and transparency makes sure that you have got systems in which councillors are checking the employment of contractors in a way that, maybe, was not the case a few years ago.

Q21 Chair: Good. Thank you. I turn now to the BBC and thank the two of you—Ms Patel in particular—for supplying us with the information so swiftly. Apologies for doing this on the same day as the BBC annual report—that was not deliberate, but we are where we are.

It is quite muddling, finding your way through the figures. Let me start by asking you about the 12,000 people you talk about who are employed through these personal service companies—freelancers, in some way. That is not your talent staff—am I right about that?

Zarin Patel: No, it is not. Talent is about 13,000 individual contracts over the course of a year.

Q22 Chair: So, if you included talent, you would go up to 13,000.

Zarin Patel: No, another 13,000.

Q23 Chair: So you have got 12,000 employed in not appearing on radio or television, basically.

Zarin Patel: With the Committee’s indulgence, when we employ a freelancer, it will be for a short period of time. So these are not 12,000 people employed for the full year. In any one year, we will have 12,000 individual engagements, some of which may be for a few months, some for six months; so, for off-air—such as cameramen, behind-the-scenes staff—about 12,000 in a typical year, but at any one point in time

that will be significantly less. For on-air talent—contributors, presenters, artists, actors—again, the figure is about 13,000, and that will depend on and change with the kind of activity in the BBC. At the moment, with the diamond jubilee and the Olympics, you can expect that number, when you see the figures next year, to be slightly higher.

Q24 Chair: I want to ask about one category in particular but, to give me some idea, out of the 12,000, how many people do you employ totally? What proportion of your total work force is employed? That is what I am trying to get at—accepting that it will be a crude figure, but a lot of your figures are approximates anyway. How many do you employ who are not talent? How many are on your books?

Zarin Patel: We have in full-time employment, and disclosed in our annual report—

Chair: Some of them may be part time but on the books.

Zarin Patel: Of course, but full-time equivalence is what I meant. We have about 20,000 people in the public service, which is the World Service, BBC Monitoring and the BBC—

Q25 Chair: That is not talent.

Zarin Patel: That is not talent; that is staff such as me and David.

Q26 Chair: Crudely, a third of the people you employ are not on the books.

Zarin Patel: They are freelance workers. In our industry, this has been a pretty standard model for a long period of time. Again with the Committee’s indulgence, it is worth explaining why freelancers are important to the economics of the BBC. You will know that the BBC has to commission programmes from the independent sector. In television, 40% of our programmes currently come from outside the BBC. In radio, it is 20%. In online, it is 30%.

Q27 Chair: No, let’s stop for a minute, because if you have a contract with an independent company to produce a programme, that is completely outside the remit of what we are looking at.

Zarin Patel: You are completely right.

Q28 Chair: It is pretty shocking that a third of those who are not appearing on radio or television, but who are employed by the BBC, are not paying income tax through PAYE.

Zarin Patel: I must assure you that nothing we do is designed to avoid tax.

Can I just go back to the point that I was trying to make, which is not about independent production companies? In one year, a drama may be produced by the BBC, and the cameramen, the director, the writer and the actor will be on freelance contracts working for the BBC. In the next year, that commission may be won by an independent producer and we would not need those staff. If we employed everyone on a full-time basis, the BBC would be carrying a lot of staff who were doing nothing. So what the BBC does, particularly in television, is to have its fixed and permanent staff base at the level of the in-house

guarantee; 50% of our TV programmes are guaranteed to in-house production. When we win a commission from an independent company or in the WoCC—the window of creative competition—we use the freelance market to staff up and staff up very rapidly. That therefore means that the value for money for licence fee payers is assured. That is a really important issue in the BBC.

The other issue, of course, is that a lot of cameramen, make-up artists and craft editors work across the industry on programmes, and they will go where the programme is made, rather than stick with one broadcaster.

Chair: Okay.

Zarin Patel: That is an important aspect of the model.

Q29 Chair: We could quarrel with that, but let me just deal with one other issue. How many presenters do you have in total at the BBC? I am not looking for names.

Zarin Patel: We have 148 presenters in news—

Q30 Chair: Earning over £50,000? How many presenters in total?

Zarin Patel: In total, we have 148 presenters on long-term contracts through service companies. In the table that we have provided—

Q31 Chair: How many presenters do you have at the BBC? How many presenters do you employ at any one time?

Zarin Patel: 148.

Q32 Chair: No. Those are on personal service contracts. How many presenters?

Zarin Patel: 467.

Q33 Chair: And how many of those 467 are on the books?

Zarin Patel: Of the 467, 148.

Q34 Chair: Out of the 467 presenters, how many are employed by the BBC and pay PAYE tax and national insurance contributions?

Zarin Patel: It will be about 320. So 320 are on staff contracts, and 148 are on long-term contracts through service companies.

Q35 Chair: It is quite interesting, because you say in your first bit of written evidence: “We are not aware of any instance where someone who is eligible to be a staff member has requested this status and has been denied it.” Well, as is usual when we come to do these inquiries, I have had a number of approaches from people who work in the BBC, and somebody who has been a presenter with the BBC for over 20 years was told that he had to go off books and into a service company and was told that he would not be employed unless he did so. When he asked for that to be put in writing, that was refused. That’s the first thing. What comment do you have on that? I have absolutely no reason whatsoever to think that he was telling me anything other than the truth.

Zarin Patel: I appreciate that, but I am not aware—we have checked with all our line managers to ensure

that when people ask to be on staff contracts, we review their position. If they are in full-time employment—

Q36 Chair: I do hope that you are being full and frank with us this afternoon.

Zarin Patel: I am absolutely being full and frank with you, Chair. We are not aware of any—

Q37 Chair: He works full time for the BBC, has no other employment and has been on his contract for probably getting on for 20 years. He goes on to say that he was told by the person with whom he was negotiating, “Don’t worry. If you have a service company, HMRC is much less likely to investigate you.” That is what he was told by the person who employed him.

Zarin Patel: That would be completely unacceptable.

Q38 Chair: I think we’ve got somebody called Stephen Mitchell.

Zarin Patel: We will follow that up, because we take this seriously. Again, I must emphasise that nothing we do is designed to avoid paying PAYE and NIC. As you know, the IR35 legislation is pretty strong in this area. The BBC makes sure that all of its tax processes are properly reviewed by HMRC. In addition, annually, just like any employer, we give HMRC details of every single personal service company, every freelance contract and every self-employed person.

Q39 Matthew Hancock: What is the justification for the 147 people who have been paid long term? This is not short term, as in local government.

Zarin Patel: It is custom and practice that presenters in our industry—this is not just the BBC, but ITV and Channel 4—are on long-term contracts through service companies.

Q40 Chair: The BBC is funded by the taxpayer through the licence fee. That is a completely different set of circumstances, which makes it utterly unacceptable for anybody to be on a contract that in any way avoids tax.

Zarin Patel: I emphasise that the processes we use and IR35 should not result in any loss to the Exchequer.

Q41 Chair: This individual has been on this sort of contract for between 15 and 20 years. When he attempted, yet again, with the support of an adviser, to get back on the books and pay his proper PAYE, he was told that he would have to take a substantial pay cut.

Zarin Patel: I cannot comment on that individual’s circumstance, because I am not aware of it.

Q42 Matthew Hancock: Hold on; there is an inconsistency in two of your answers. You have just said that IR35 means that you do not avoid any tax through using personal service companies. Is that correct?

Zarin Patel: Yes.

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Q43 Matthew Hancock: Why do you use them, then, other than to ensure that you pay less tax?

Zarin Patel: That goes back to the point I made about freelancers being a big part of our work force. When it comes to presenters: first, it is custom and practice; but, secondly, as the BBC's needs—

Q44 Chair: It is common practice—where?—not in the public sector. We all think it is unacceptable in the public sector for people funded by the taxpayer not to pay their fair dues. That is unacceptable.

Zarin Patel: I am going to emphasise—

Q45 Mr Bacon: Can I just distinguish? You gave, I thought, a fair characterisation of the structure of the industry and why you have the staff levels that you do, given the obligations placed on you to farm out work commissioned and provided by independent production companies in television, radio and online. You gave a good example of a drama that may be commissioned by the BBC or commissioned by somebody else and published by the BBC, as it were, which is something that we can easily understand, whether it is an actor, editor or cameraman. There are lots of situations where that could be seen to be the right thing to do. Presumably, if an independent production company won the same drama, those folk, or many of them, would go to work for the independent production company. That is easy to understand.

Your justification in relation to presenters was that it is custom and practice—in other words, “We have always done it that way”—but if you are presenting for the BBC year in, year out for many years, you are not simultaneously, in the ordinary course of business, being a presenter for Sky or ITV, are you?

Zarin Patel: No, but people have outside earnings as well.

Q46 Stephen Barclay: Let us come on to that, because you are quite right that each case is judged on its own merits, but looking at the BBC contract, one of the impediments to people working elsewhere is that the contract prohibits them, as I understand it, from doing similar work within the UK. So there are quite strict controls. When you say, “Well, someone is freelance because they are doing a job with the BBC and a whole load of other things,” but, actually, within the contract you restrict the work they can do elsewhere. Do you also, within the contract, restrict whether someone else can provide the services? In other words, the right of substitution—do you apply that within the BBC contract?

Zarin Patel: David, will you answer that?

David Smith: It would be for the editor of the relevant programme to determine the appropriateness of anybody who was put forward.

Q47 Stephen Barclay: The contract is cleverly drafted, and, clearly, it has been drafted with a degree of ambiguity. For example, clause 13.1.1(a), on termination, states, “If the contributor is unable personally to provide the services”. Clause 3.1 also refers to the personal nature of the services. Of course

these things would have to be looked at on a case-by-case basis. But what is unclear to me is this: if this contract does not allow substitution—so it has to be that person who provides the service—if the payment is made a month in arrears, in essence it is the same as paying salary. It is along the same lines. If you limit the ability to work outside, or that limit is so strictly defined that, while you can go and work in some far-flung country, in essence it is restricted within the UK; and if it is silent on control and yet logic would suggest that there is a degree of control in the way people work, does it not look as if the terms of employment are there, even though you are calling it something else?

David Smith: I accept what you are saying. This is not an easy answer to give. HMRC themselves have recently issued guidance on determination of IR35 and the examples they have given are not dissimilar to control and length of service. The document that they issued in May gives a number of examples that are not dissimilar to our type of contracts.

Q48 Stephen Barclay: So what I'm saying is that HMRC issued guidance that said the sort of things you should look at are the following—but it is always on a case-by-case basis. But those four tests I read out, along with control, are in essence the five key tests, as I understand it, which, if they are not satisfied, would strongly point to employment rather than a contractor. Your contract seems to entail all five.

David Smith: I accept that. But as I say, the guidance that they give and the examples that they give highlight that it is not as straightforward as you suggest.

Q49 Chair: I am a bit puzzled. If you accept that, are you accepting that you are offering contracts that are not in compliance with the law?

David Smith: No, no, not at all. The guidance and the examples given by HMRC in their own publications are very much in line with the sort of clauses that you took about. These examples don't give a clear decision. What they do is to grant for the individual the rules under which they can get clearance, be that in or outside IR35.

Q50 Stephen Barclay: But it would depend on the facts of the case. I appreciate that it depends and one would have to see. We are not given the information to see, unfortunately, because it is confidential. But for example, if someone's hours are fairly defined and they are not free to come and go as they please, if they are not free to allow someone else from their consultancy service to substitute for them, these are the sort of indications from which HMRC would conclude that they are operating as an employee. What I am pointing to is that if you look at your contract there is some ambiguity around financial risk and intention of the parties, where it looks neutral; and provision of equipment at clause 7.2 could lead towards self-employment; but it looks as if there are a number of factors within this contract that point to, in essence, these people being employed. I don't get a sense of the extent to which your compliance department, the BBC Trust, or someone reviews these

to look at whether these people are being employed or whether HMRC, which we will come on to, are reviewing to see whether these are, in essence, employment contracts.

Zarin Patel: Let me explain that. As the BBC senior responsible officer on tax matters, I annually have to certify the BBC's compliance with all due tax processes. So every one of our tax processes is properly documented and reviewed by HMRC to ensure that the BBC is paying the right tax at the right time. In addition, as I said before, we ensure that HMRC annually in our return have details of every freelance contract; self-employed sole trader or a personal service company; the name of the individual; the name of the service company; all fees, expenses and VAT paid by the BBC to those companies. In this way, HMRC have complete visibility to monitor service companies. In addition—

Q51 Chair: Are you, as the employer, completely satisfied that in issuing these thousands of contracts you are complying with the law?

Zarin Patel: Yes, I am. We also put a very strict legal obligation on those on service company and freelancer contracts to ensure—

Q52 Chair: No. You put the obligation on either HMRC or the individual, and the individual with whom I talked felt really bullied by those obligations. I am anxious to establish whether you, as the employer, feel completely satisfied, with the contracts of all these presenters, producers, directors or whatever—many of them the face of the BBC—that you are working within the law.

Zarin Patel: Yes, I am. Nothing we do is designed to avoid tax.

Chair: Goodness!

Q53 Fiona Mactaggart: I was ready to ask you for a list of these people. I am grateful that you have produced a list. It seems that, if you compare the list of job roles and how they are paid that you have issued with the one the Government have put on the Treasury website, there is one very important difference that goes to the heart of what the Chair is talking about. On the Government website, there is a column that refers to engagement length, which in these cases is between nought and six months, and in some cases four to five years. If the Chair is right that there is someone who has been on a personal service contract for decades, that seems to breach the intention of the legislation. Can you provide the Committee with a further column to the data that you have helpfully given us that says specifically the length of employment of people in these roles who are on personal service contracts?

Zarin Patel: Yes, I am sure we can do that.

Stephen Barclay: I think the key is not just how long that the current PSC is, but how many they have had over a period of time; obviously, if in essence you are churning the same staff.

Q54 Chris Heaton-Harris: You have 140-plus long-term staff on this sort of contract. Mr Barclay has identified that the contract is pretty much the same as

a full-time employee's contract in terms. Mr Hancock has identified that essentially they should be paying roughly the same amount of tax. Mrs Patel, you have just said that the BBC ensures it pays the right tax at the right time—I think that is right. Could you tell us what the average tax rate is that these individuals are paying?

Zarin Patel: I am not sure that we would have that information. David, can you comment?

David Smith: We provide HMRC with all of the fees that we pay to them, but what we do not have is the knowledge of any other income that they have.

Q55 Chris Heaton-Harris: So you can't actually identify that they are paying the right tax at the right time.

David Smith: We provide HMRC with all of the details of what we pay them. We couldn't comment on any other income that they have got; whether this is an instant of a far bigger trade that they may be running. It is simply not the information that we have.

Q56 Chris Heaton-Harris: So you are completely sure they are paying the right tax at the right time, but you can't identify what they are paying, so you can't give us a rough estimation. Most service companies are set up a bit like—excuse me for being slightly partisan—the Ken Livingstone thing, where you pay yourself dividends and pay as little tax as possible.

Zarin Patel: Let me explain our tax process. Our tax process will look at whether someone is a full-time employee. All of our ongoing employees are not on service companies. So that would be rule one.

Q57 Chris Heaton-Harris: I think we are talking about the 140-plus.

Zarin Patel: I understand that. If you take the example of the news presenter that the Chair talked about, we will look at what the employment pattern is. We have very strong rules to determine whether they are on employment or freelance contracts or personal service companies.

Q58 Chris Heaton-Harris: I am sorry; the point I was getting at is that you have told us that they pay the right tax at the right time. You can't honestly say that can you?

Zarin Patel: Our processes are designed to ensure—

Q59 Chris Heaton-Harris: Can you guarantee to me that the 140, whatever it is—143, 148—on these contracts, are paying the right tax at the right time?

Zarin Patel: I strongly believe they would be, because their contracts clearly—

Q60 Chris Heaton-Harris: We have moved from definitely guaranteeing to strongly believing. I don't think you can.

Zarin Patel: Well, I cannot in terms of their personal tax affairs, but the processes that the BBC puts in place and follows and that HMRC has reviewed are designed to ensure that the right tax is payable. Of course, I can't pierce the veil of personal financial companies to ensure that they are doing that.

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Q61 Mr Bacon: Indeed; you can't pierce that particular veil, but there is something else that you can do. Do you send HMRC a list of people to whom you have made payments, which has the total sum of payments that have been made to that individual attached to it?

Zarin Patel: Absolutely.

Q62 Mr Bacon: You do? So it is then up to HMRC whether it tracks back and investigates, but it has, from you, the information that it needs to do so.

Zarin Patel: Exactly.

Q63 Matthew Hancock: Following on from that question, you just said that all your ongoing employees pay the full amount of tax.

Zarin Patel: They wouldn't be on personal service companies; they would be full-time employees of the BBC.

Matthew Hancock: If they are ongoing employees—

Zarin Patel: We have a strict rule that says if you are an ongoing employee in a permanent role—I am in a permanent role, as is David—you cannot be on a personal service company. In addition, if you have any financial and budgetary authority, you cannot be on a personal service company. If you are directing the affairs of the BBC, you cannot be on a service company.

Matthew Hancock: That would be illegal, so that is hardly surprising. Carry on.

Zarin Patel: And the last one is leading significant teams of people, so none of those people who have permanent, ongoing roles in the organisation will be on a personal service company, including interim directors.

Q64 Matthew Hancock: Those criteria match the law, so I am very glad to hear that they are similar, at least. Ongoing employees, as I understand it and as it is reasonable to understand, means people who are employed by the BBC for a long period of time. How long is the longest period of employment for somebody on a personal service company?

Zarin Patel: I do not have that information to hand, but we will be able to—

Matthew Hancock: You don't know?

Zarin Patel: I said that I do not have the information to hand, but we will provide it to the Committee.

Q65 Matthew Hancock: Thank you. Could it be more than five years?

Zarin Patel: I suspect, on average, not.

Q66 Matthew Hancock: No, I did not ask for the average; I asked for the longest. Five years?

Zarin Patel: I wouldn't commit. I would rather check and let the Committee have that information.

Q67 Mr Bacon: Indeed, to speak to Mr Barclay's point, it is an issue of filtering out whether they have had several contracts, just to make each contract look shorter.

Zarin Patel: Yes.

Q68 Matthew Hancock: Following that, the Chair has had somebody approach her with someone who has been on one of these for 20 years, which seems to me to be an ongoing employee. Does that not seem to you to be an ongoing employee?

Zarin Patel: It does, and I think that it would be really important for that to be reported on a confidential basis. We have a confidential department that can—

Q69 Matthew Hancock: Okay, but I want to get on to this broader point: earlier, in answer to a question from me, you said that people on the service companies and people on PAYE pay the same amount of tax.

Zarin Patel: The effect of the legislation IR35 is to ensure that they do.

Matthew Hancock: They pay the same amount of tax.

Zarin Patel: They pay the same amount of tax—employer's NIC, employee's NIC and PAYE—and David can explain how the legislation works in more detail.

Q70 Matthew Hancock: Hold on—but you do not know how much tax people with personal service companies pay. You have just admitted that you do not know.

Zarin Patel: No, but the process we have designed—we work with HMRC to follow their guidelines really carefully—is to ensure that we put ourselves in a position where we can be sure that personal service companies are used appropriately in the first instance, and then we ensure that HMRC have complete visibility of each payment to each individual for each engagement, to make sure that HMRC can properly monitor the use of personal service companies and apply the deemed IR35 payment, should it be like an employment.

Q71 Matthew Hancock: And when you said that they pay the same amount of tax, do you include national insurance with that?

Zarin Patel: Yes, we do.

Q72 Chair: You don't pay national insurance contributions for them, do you?

Zarin Patel: No, but the service company would have to as though they were in employment.

Chair: But you do not.

Q73 Matthew Hancock: The service company would pay the employer's national insurance as well as the employee's national insurance.

Chair: But the BBC wouldn't.

Zarin Patel: Typically, a freelance contract will be at a higher rate than someone on full-time employment, because it takes account of the fact that the personal service company will pay employer's NIC, PAYE and pension as well. So, from the BBC perspective, there is no real saving.

Q74 Matthew Hancock: Okay. Help me get to the bottom of this. Either there is no benefit at all to using a personal service company, or people pay less tax if

they are employed through a personal service company. One of those has to be true, right?

Zarin Patel: In my judgment, the IR35 anti-avoidance legislation is very strongly crafted, so that if you work through a service company, on an employment-type contract or quasi-employed, you will pay the same amount of tax.

Q75 Stephen Barclay: The liability is with the individual to pay the right amount of tax, but if the impression is that they are working for more than one party, which is the rationale for being on the personal service company, they will be saying that IR35 does not apply. Therefore, to come to Mr Hancock's point, they will be paying far less tax; whereas what you are saying is, assuming that they are not working for any other parties through the PSC, they would not. But the whole point of them being on the PSC is in order to say that IR35 does not apply.

Zarin Patel: No, I don't think so.

David Smith: No. HMRC themselves grant a ruling in advance of everything. It is very clear in the documentation. From a personal position, if somebody wants to get a ruling determining whether or not the BBC in isolation is caught within IR35, or if you look at their affairs in the round and they are outside IR35, they can get a very clear ruling in advance.

Q76 Chris Heaton-Harris: These 148 are essentially your better-paid presenters, aren't they? What a personal service company allows you to do is to pay them a slightly bigger premium, so you are competing against the other companies out there and you actually pay less national insurance yourself. It is a win-win all round, isn't it?

David Smith: Not really. It is a flexible model. The people we are talking about, generally, within the industry would be people who regard themselves as working and sell their services on a freelance basis.

Q77 Chair: Let me put this to you, because it seems to me, having had this conversation, that there is no advantage in what you allege to the individual, because the individual will pay their national insurance and tax. There is an advantage to the BBC—this is building on what Chris said—because you save yourself your own employer national insurance contributions, you save any sickness pay, you save holiday pay and you save pension contributions. Given that most of your income comes from the taxpayer through the licence fee, is it right that an organisation like the BBC should use these mechanisms, which may be lawful but are not morally right, either to avoid giving the individual their pension contributions and their sickness benefit, or to avoid giving your contributions back to the state through NICs? Is it right?

Zarin Patel: Of course it is not right, but the BBC does not do that. Typically, a freelance contract rate will be higher than for an employed presenter because of exactly the things you talked about.

Q78 Chair: But you avoid paying employer national insurance contributions. On that basis, if somebody is on a personal service contract, you are not paying

your bit of the tax due from your organisation back to the Treasury to be used to fund much-needed services for the community.

Zarin Patel: Typically, when you check freelance rates, you will see that they are 25% higher than some of—

Chair: You are not answering the question.

Zarin Patel: I am trying to answer the question.

Q79 Chair: It is your national insurance contributions—you are not paying them.

Zarin Patel: But we are ensuring that through the service company, which is an important part of custom and practice in this industry, we follow due process. A freelancer will typically be paid far more than a member of staff.

Q80 Chair: Are you paying the national insurance contributions?

Zarin Patel: We are paying the freelancer an all-in rate, and as IR35 works properly they will pay it to the Exchequer.

Q81 Chris Heaton-Harris: So you are paying the freelancer some money for them to pay national insurance on?

Zarin Patel: Typically, if you pay a freelancer, you tend to pay a higher rate, because they have to pay their NICs and their pensions.

Q82 Chris Heaton-Harris: I have been a freelancer in my time, so I know exactly the contract you are talking about. The reason why you go as a freelancer is so that, as a presenter, you can therefore write for a British national newspaper and get paid for that as well. That is two employers, so they can be self-employed and therefore you can benefit from a better taxation rate. But what you are saying is, I think, technically wrong, because you cannot guarantee to anyone in this room that the bit of money that you are paying them—the 25% premium—is for national insurance, pension and other things. What it is, and I am happy for you to be much more honest about this, is a way of enabling the BBC to compete in a marketplace for presenters that are of a higher rate than you would normally get. If that is what it is, tell us, because that is great.

Zarin Patel: I really do not believe that is what it is. Let us take freelance presenters and long-term presenters. As the BBC's needs change on a particular programme, we can change that contract really quickly. For example, you will see in our annual report this year that we have reported yet another drop in talent spend. We would not be able to achieve presenter salary and on-air talent spend reduction, by 25% in a year in some cases, if the freelance contracting model was not in place. Trying to change and reduce the costs paid on talent on employment contracts would be impossible.

Chair: But, Ms Patel, I have to tell you that all Government Departments employing people in a straightforward manner—paying their PAYE and their national insurance—have reduced their staffing, in some cases by a third, without having to use devious means and odd contracts. Looking at local

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government, probably even more has been cut there. You do not need to have devious means to do it.

Chris Heaton-Harris: It is very good of you to make the case for more employment flexibility in the labour market—a number of us around this room have been doing that for ages—but it is not necessarily what we are trying to drive at here. What we are partially worried about is the 148 individuals for whom you seem to be spuriously paying national insurance contributions. I very much doubt that the slice that you think is going to national insurance contributions in that contract actually goes to the Exchequer in any way, shape or form.

Q83 Mr Bacon: For these 148 on-air contributors or presenters, as you call them, for how long would somebody have to be a contributor before you thought that the right thing would be for them to be on the books, rather than being paid gross through a personal service company?

Zarin Patel: That is a good question. David?

David Smith: Again, I think it depends on the relationship that the individual has with the programme or how long we think the programme is going to—

Q84 Mr Bacon: Well, a news anchor—somebody who reads the “Six O’Clock News” or presents the “Today” programme, for example. I am just taking two examples; I am not trying invidiously to seek out particular programmes. A major news programme on television or on radio would be a good example. How long would somebody have to be on a programme like that before you would consider that the right thing to do would be to have them on the books?

David Smith: That is not something we have looked at internally—

Q85 Mr Bacon: Isn’t it? Surely, the HMRC rules, which you prayed in aid earlier, Ms Patel, require you to do that, do they not?

David Smith: No.

Zarin Patel: They require the service company to do that. In order to help the Committee, as we are giving you more information, perhaps we can analyse the 467 presenter contracts we have—with typical lengths and roughly what kind of roles they do—to illuminate this issue for the Committee.

Q86 Mr Bacon: Yes, although I am not only interested, to repeat Mr Barclay’s point, in the length of an individual contract, but whether it is then rolled over, repeated or renewed, so that it might end up being three or five contracts over five years or something.

Am I right in thinking that if you engage someone to read the news at 6 o’clock—the “Six O’Clock News”—you can control what they have to do? I am looking at a list of HMRC criteria. You control what they have to do. Is that right?

Zarin Patel: Yes. We can direct—

Q87 Mr Bacon: Do you control where it is done?

Zarin Patel: Yes, probably.

Q88 Mr Bacon: Do you control when it is done?

Zarin Patel: Yes.

Q89 Mr Bacon: Do you control how it is done?

Zarin Patel: Pretty much so.

Q90 Mr Bacon: So it is not merely, although this is the criterion, that you have the right to exert control—that is what is significant, not whether the right is exercised—but it is true in this case, for reading the news and for being a presenter, both that you have the right to exert control and that you actually do exercise that right. That is correct, isn’t it?

Zarin Patel: It is, which is why, of our 467 long-term presenters, over 300 are on staff contracts.

Q91 Mr Bacon: Because it is clear that you exercise control?

Zarin Patel: Yes.

Q92 Mr Bacon: If you have got a good case to put to defend your position, then let us hear it. I am not saying that the way you operate is necessarily wrong, although it sounds to me as though one or two of my colleagues may be thinking that. I want to hear the facts. As I said earlier, I thought that you gave a good characterisation of why the industry has a lot of freelancers.

David Smith: It is not a black and white situation, which I think is the position we are taking here. If you refer to the examples in HMRC’s document, even it talks about people with control—people with long-service contracts—and yet they fall outside some of the IR35 guidelines. Again, we do not necessarily have that level of information to be able to make that determination, but the control that you refer to is inherent in some of these contracts in here. We have to be able to protect the BBC from any exposure that may exist in a freelance contract. The service company arrangement is something that achieves that for the BBC.

Q93 Mr Bacon: The issue is, as you rightly say, not black and white. For us, the issue is within the grey: whether there are cases where a considered, balanced, objective view would say reasonably clearly that it should be one thing, but where it has turned out to be another thing, for reasons that mainly are to do with benefiting the individual through how much tax they pay, rather than to do with what ought to be the case. That is what we are interested in here.

David Smith: Yes; indeed. The anti-avoidance legislation is there to prevent that.

Q94 Stephen Barclay: Richard is right, and as you say, that it is not black and white, and each case would need to be looked at. Are you aware of any instances where HMRC has intervened and informed you that someone on a PSC is not meeting the criteria of that PSC?

David Smith: Not that far, no. I am aware that HMRC is reviewing a couple of PSCs, but I am not aware of the outcomes of those reviews.

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Q95 Stephen Barclay: So not a single one has been challenged, to your knowledge, by HMRC?

David Smith: No. Again, it is not information that would necessarily be shared with us in the BBC. It is information that is personal between the PSC and HMRC.

Q96 Stephen Barclay: Can I clarify something, Miss Patel? You said that no one in a senior management role is on a PSC, or in a significant management function. Is anyone exercising a management role who is on a PSC?

Zarin Patel: Absolutely not. After the Alexander review, we reviewed all of our current 3,000 service company arrangements to ensure that that was not the case. As a result of that review, we put two people in our BBC training facility on full-time employment contracts. They were not senior managers at all, but project managers on a training project. We felt that there was an ongoing employment position, and therefore we put on them on PAYE.

Q97 Stephen Barclay: Just in terms of understanding this grey area, why were they on PSCs to start with?

Zarin Patel: They were initially brought in as interim project managers on a training project that we had. They were both very successful, so we kept extending their contract. We felt that that was kind of an ongoing role and that they should come on employment.

Q98 Mr Bacon: Can you remind the Committee about the reason why you had to do the Alexander review?

Zarin Patel: We felt that it was good practice to review all of our arrangements because there was public concern.

Q99 Mr Bacon: Even though he did not specify that it included you? You just thought it was good practice anyway?

Zarin Patel: We thought that it was good practice to do it.

Q100 Mr Bacon: What about further back? Was it the case in the past that senior managers were on personal service contracts?

Zarin Patel: I'm not aware of any. I think the BBC has some history—

Q101 Mr Bacon: But there was a rumour that was mentioned in the press—I have no idea whether it was

true or not—that John Birt, when he was director-general, was on a personal service contract.

Zarin Patel: That was what I was going to say. The last time this happened to us was with the previous director-general.

Q102 Mr Bacon: Was that correct? Was he on a personal service contract?

Zarin Patel: I believe he was. I was not at the BBC at the time.

Q103 Mr Bacon: No, but you are now the finance director, and you are speaking here for the BBC. Does anybody in the room know if he was on a personal service contract?

Zarin Patel: I believe he was, but I was not at the BBC at the time. I think it was quite public at the time. It was then that the BBC changed its rules about senior managers not being personal service companies.

Q104 Chair: Just a final question, because we have probably been around the houses: in view of what is clear public concern that an organisation like the BBC may be employing mechanisms to minimise its expenditure and therefore its contribution to the Exchequer, as well as minimising the contribution from its employees, either permanent or temporary, are you intending to review your current use of personal service contracts, particularly in the talent group? We focused on presenters.

Zarin Patel: With the amount of public concern expressed today, I think I have to say, “Yes, we will review it.” We will review it with real seriousness. Can I emphasise that none of this is designed to avoid tax? That is not why we use an extensive number of freelance contracts in the BBC.

Q105 Chair: Can I just put it to you that a lot of the people that are on these contracts are the faces of the BBC, so to pretend that they are anything other than pretty permanent features on our television screens and on the radio is a bit naive?

Zarin Patel: We understand the Committee's concerns.

Q106 Stephen Barclay: If you are going to review it, could you just indicate the time scale and confirm that you will write to the Committee with the results of that review?

Zarin Patel: Of course.

Chair: Thank you very much indeed.

Examination of Witnesses

Witnesses: **Sir Nicholas Macpherson KCB**, Permanent Secretary to the Treasury, **Lin Homer**, Permanent Secretary to HM Revenue and Customs, **Howard Orme**, Director General Finance, Department for Business, Innovation and Skills, and **William Hague**, Executive Director of HR Policy, Efficiency and Reform Group, Cabinet Office, gave evidence.

Q107 Chair: Welcome to you all. The first thing the Committee would want to do is acknowledge the promptness with which people, particularly Ministers, responded to the revelation that there was a problem in the civil service with people who were basically full-time employees but were being paid through personal service companies. There is—this point is really to you, Nick—general support for the work that has been done in Government since this was first revealed by a journalist.

I am quite interested in the history of it, because, looking at your review, it looks like 15% of senior civil servants ended up being on these service contracts, which is a heck of a lot. Some 1% were on these contracts for more than 10 years, some 40%—that is more than 900 people—were on them for more than two years and some 120 were non-IT specialists, so it was not all an IT issue and, as some 70 people were earning more than £1,000 a day as well, a heck a lot of it was happening. How come it went on undetected? Can you give us an idea of how on earth this ever happened?

Sir Nicholas Macpherson: I think that the report is a wake-up call to all of us, and I shared your surprise. I would not compare the numbers with the numbers in the senior civil service, simply because the people in the senior civil service get paid more than £58,000 a year and on top of that they get a pension. If you are employing someone on a short-term consultancy project, there are good reasons—market reasons—why you might give them a higher payment per day than a permanent employee; but, nevertheless, it was the long-term nature of some of these arrangements that I found worrying. I think some of this is a hangover from the culture of employing consultants on a large scale. It started under the previous Government, but you will recall that there were progressive clampdowns on consultancy spend, which culminated with the current Paymaster General, Francis Maude, putting in place quite strict controls. I think that that was necessary, because what has tended to happen is that at the point that these people were taken on to Whitehall's books, some people thought—in some cases, they clearly did not think about this—about the wider implications around their tax affairs and so on, but what is disturbing is that the arrangements had clearly not been reviewed. There are some, I think, who have been employed under these arrangements for 10 years or more, and that to me is very odd indeed because—I think Lin has sent you a very useful note setting out some of the criteria which—

Q108 Chair: But over 900 had been in for more than two years. It shocked you; it shocked us, but what I am trying to get underneath is, why? Why did it happen?

Sir Nicholas Macpherson: I think the lesson of this is that you would think, if someone was being employed on that basis, there would be regular

reviews or Departments would have in place systems which would say, “Hang on a second, this person's now been employed on this basis for more than a year; we must stop or review it.” What came out of the review for me was that if that was going on, it did not seem to be very effective. Before I start criticising other Departments, if you look at the data, the Treasury has some people employed on this basis.

In the case of the Treasury, I have had assurances that everybody has paid the right tax, but nevertheless I am uncomfortable with the number. It is striking that, even since the review, the number of people being employed or contracted on this basis has declined by 10%, I think, which suggests that the mere fact of the review has had an effect. I would expect that the Chief Secretary is going to—a year on we are going to have a follow up report, and it will be really interesting to see whether those numbers have come down further.

Q109 Chair: You are slightly evading my question. Let me ask you, perhaps more specifically: the Treasury authorised the appointment of the chief executive of the Student Loan Company—why?

Sir Nicholas Macpherson: Looking at the individual case of the chief executive of the Student Loan Company, I think this is one of those catalogues of errors.

Q110 Chair: Why did you authorise it?

Sir Nicholas Macpherson: The Treasury was initially consulted about whether it was possible to have an accounting officer who was employed as a consultant. The answer to that narrow question is, “Yes, you can have an interim head. You could have an interim employed through an agency.” We failed to ask, “Hang on a second, what does that mean for the tax affairs?” I have looked at the advice the Chief Secretary received. At that time, there was an urgency to get someone doing that job, but no one in the Treasury had identified the tax issue. It had been drawn to our attention that the proposed form of employment was value for money, but we should have challenged that, because if you look at managing public money, which I do regularly—

Q111 Chair: You are in charge of HMRC.

Sir Nicholas Macpherson: Exactly. If you work in the Treasury, from the moment you join, if you work for a spending side, you know that in taking a view on value for money you need to look beyond the narrow interests of the Department to the wider public sector, which involves taking into account tax as well as the expenditure. We should have picked that up, but we did not. We did not draw it to the Chief Secretary's attention, and so there are lessons for us.

Q112 Chair: You made a mistake.

Sir Nicholas Macpherson: We made a mistake.

Q113 Chair: So who is responsible? Presumably, you must have authorised other appointments of the same nature. Have you?

Sir Nicholas Macpherson: It is quite a recent innovation that the pay of chief executives goes to the Treasury; traditionally, this has all been devolved. When the new Government came in, it decided to adopt a policy where nobody could be paid more than the Prime Minister, without the agreement of the Chief Secretary, so this package came to the Treasury in that context.

Just to be clear on responsibility—and we have this discussion from time to time—the Treasury cannot police every individual pay contract in Whitehall. The framework we have is that the Treasury appoints an accounting officer, who is responsible for the principles of managing public money. In this case, I appoint, I think, Martin Donnelly as the accounting officer for the Department for Business. It is then down to him to satisfy himself that the pay arrangements in his Department are consistent with the principles of managing public money. Obviously, if something comes back to the Treasury, the Treasury has the responsibility for getting it right. As I said, in this instance, the Treasury failed to ask the right question, and I very much regret that, but it is the responsibility of the Department, and indeed Howard Orme is here representing the Department, to take a view. No doubt, BIS took a view—

Q114 Mr Bacon: Can I come in on this point? I completely accept your point, Nick, that ultimately—perhaps that is the wrong word to use in this context—but the principal responsibility in the first instance rests with the Department. Mr Orme, in this case, what happened is that BIS campaigned to get the decision it wanted, didn't it? It looked at the situation and did not like what it saw, so it campaigned to get approval for it to be done off-payroll? That is right, isn't it?

Howard Orme: Can I draw back? I will answer that question. Reading through the FOI has been very revealing for me to see the sort of issues that have been going on, and we will use this as a case study in how we should do this going forward—

Q115 Matthew Hancock: How you should do it.

Howard Orme: How we should do it, yes.

Q116 Mr Bacon: You mean you should campaign more vociferously or more successfully.

Howard Orme: Tax issues in these types of complex arrangements should be properly understood, and certainly we must not give the impression of or actually be party to tax avoidance measures, which clearly was unacceptable. I say that—

Q117 Mr Bacon: In fairness, Mr Orme, HMRC has managed to be party to significant tax avoidance through its own property portfolio, but we will let that pass for now. Mr Orme, are you going to answer my question?

Howard Orme: I was going to say that there are two elements to this. One was the initial interim appointment—

Q118 Mr Bacon: And then there was when it stopped being interim, and it became a fixed-term contract.

Howard Orme: And the conversion to a fixed-term appointment.

Q119 Chair: Although he is now leaving, I understand.

Howard Orme: He will have completed his fixed-term appointment as planned, and we can go through a measured process to replace him. The issue at the time, as the Committee well knows because you have looked at it forensically—

Q120 Mr Bacon: We had him in front of us, and I asked him how many days a week he did. He said five.

Howard Orme: The Student Loans Company needed decisive and fast action on leadership. The way to do that was through an interim CEO, and I suggest that that was a successful process. We brought the right person in, at speed, and he began to turn the company round. Part of the arrangements, as well as being required to get that to happen, was to meet the agency's requirement that we dealt the matter through it. As Lin outlined, one of the motives for having personal service companies was to work with the agency.

We also had to get a package that my colleagues in the Treasury and Cabinet Office were happy with and we thought was value for money, so there was negotiation down from £260,000 to under £200,000. The reason why I and BIS were involved at that time was that the chair of the Student Loans Company and the CEO had resigned, so BIS had to step into that void to get this appointment in place. That lasted for six months, and during that time the Student Loans Company, in a more measured way, went out to find a more permanent leader for the company. That process was free and open competition.

Chair: I think we know the history, Mr Orme. What we want to know is why.

Q121 Mr Bacon: Why did you campaign? That is what I am asking. You got advice—I can't remember whether it was the company or BIS itself that asked KPMG for advice, but we all saw it on our television screens. The answer came back that this chap should be on the books. The BIS e-mails then said, "Do you know what? This is really unhelpful. I think we should try harder." That is the issue. You go out and get professional advice from one from the world's leading accounting firms, and its advice is what you don't want to hear, so you characterise it as unhelpful, and try again. That is what we don't understand.

Howard Orme: Again, after reviewing the FOI trail myself after the event, because I was not seeing any of this, the original question to the KPMG—

Q122 Chair: We are not interested in the FOI trail; we are interested in the truth.

Howard Orme: The truth is this: the KPMG advice had a complication as to whether BIS was going to be party to this arrangement, because we had done the negotiation. When it became visible that that was the

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case, we were very clear that it had to be the Student Loans Company's arrangement.

Chair: But you were complicit in that. This is awful.

Q123 Mr Bacon: Sorry, did you say that it had to be the Student Loans Company's arrangement to keep it off the books, rather than yours?

Howard Orme: No, not to keep it off the books.

Q124 Mr Bacon: To keep it as a personal service company.

Howard Orme: No, the appropriate arrangement for having a CEO in one of our businesses is for the arrangement to be with the Student Loans Company, not the parent Department. Once that was clarified—

Q125 Stephen Barclay: An employee would be employed by the Student Loans Company as well.

Howard Orme: Yes. You were asking whether we campaigned because we did not like the advice. The issue was that the advice was not on the arrangements that were intended. The arrangements that were intended were to be between the Student Loans Company and Penna and, therefore, Ed Lester.

Q126 Mr Bacon: So you are admitting that you were poor commissioners of advice. You bought advice that was not the advice that you wanted.

Howard Orme: In the end, the advice was given. When the second set of advice came in, which was on the brief that was given, then that was clear.

Q127 Matthew Hancock: Are you saying that the difference between the two pieces of advice was because KPMG thought that it was not okay to employ through a personal service company when BIS was involved, but it was okay when the person in question was hired directly by the Student Loans Company for five days a week, full-time, and all the rest of the clauses that we know about? That seems implausible.

Howard Orme: As I have read the advice—I am not a tax expert—there is confusion in there as to the exact arrangements that were going to be in place. The arrangements would be for the Student Loans Company to contract for its CEO on an interim basis—

Chair: Could you answer Matt's question?

Q128 Matthew Hancock: Are you saying that the first piece of advice received from KPMG said, "You cannot use a personal service company in this case,"—or rather "ought not to" as it was advice—and the reason that changed was that BIS were no longer involved in the employment?

Howard Orme: Look, this whole structure was evolving as this was going through. We did not know how we could bring in an interim CEO on this basis. That is why you can see quite a long and complicated exchange of e-mails in the FOI. This was problem solving: how do we manage to get an arrangement that Penna will find acceptable, that is acceptable for tax purposes and that enables us to get Ed in quickly? That was the advice that we were trying to get.

Q129 Chair: Mr Orme, I put it to you that what actually happened was that you got advice that it was not acceptable for tax purposes to put Mr Lester on a personal service company arrangement. You found that advice—

Mr Bacon: Unhelpful.

Chair: Thank you. And you therefore deliberately sought advice and found a mechanism that you thought would make it lawful for him to be employed on a personal service company arrangement, thereby avoiding tax.

Howard Orme: Sorry, you are making it sound as if it was I who had done this—

Q130 Chair: I'm putting it to you that that is what happened. The first bit of advice was unhelpful, so you sought some more to make it helpful.

Howard Orme: The first bit of advice was that the Penna agency's arrangements were unacceptable, so we could not get Ed in. It was my understanding that we needed to be able to have a structure that would enable us to deal with him.

Q131 Chair: If that was the problem, you could have just paid him more and done it in a legitimate way, so that he paid his PAYE and national insurance contributions.

Howard Orme: Look, what I can say about it—

Q132 Chair: You could have done that, couldn't you? That would have been acceptable. He did not care about that. What he cared about was what he got in his pocket.

Howard Orme: No, I do not think that is the case. The motive for the personal service company was the requirement that he was working through the agency. That is what I believed to be the case.

Q133 Mr Bacon: This leads immediately to another question for HMRC. Why did HMRC, when eventually approached to approve what became the final arrangement, agree to it? He was plainly an employee. He had stopped being an interim. He had become an accounting officer and chief executive who was on a permanent—let me rephrase that—a fixed-term contract, not interim. Why did HMRC find within itself that that was appropriate to be paid for through a personal services contract, rather than an employment arrangement?

Lin Homer: Chair, I think what happened in this case is that a narrower question was put into our general advice system—you will know as well as any how many calls and letters we receive—which was a more limited question about what you do if you are using the skills of someone you are taking through an agency. Can you pay gross? So we confirmed—

Q134 Mr Bacon: I think it was specifically signed off in relation to Mr Lester.

Lin Homer: But this was not signed off in the sense of the customer relationship manager for the Department, this was a general question to one of our advisers—

Q135 Fiona Mactaggart: Why?

Q136 Mr Bacon: There was an e-mail from an HMRC tax inspector approving the tax arrangements for Mr Lester, as a chief executive and accounting officer with a fixed-term contract for two years, who was plainly an employee, to be paid gross through a personal service company. I just want to know why.

Lin Homer: If you'll permit me to just explain a little bit about personal service companies. I have sent you what I hope was a useful summary.

Mr Bacon: It was.

Lin Homer: The simple position HMRC is in is that we want people to pay tax. Arrangements like this that use an intermediary—there are a number of types of intermediary—run the risk that tax will not be paid at the appropriate rate, so HMRC tries to put together tests. We have explained those tests to you. We take the view that the engaging organisation has to consider whether it is contracting for a service or for labour. If it believes it is contracting for services, then we put obligations on the provider of those services, either themselves to deduct PAYE and NI—to be honest, as tax authority, I don't mind if I get it from the intermediary or the engaging organisation—and if at the end of a period they don't, we will use IR35 to require a broadly equivalent¹.

So to the simple question can I employ, in that very narrow sense, the correct answer was given. I think it is unfortunate that that did not take place in the richer relationship with one of our customer relationship managers. We have talked about those before. We have one for the BBC—who you had here earlier. We have one for the top 100 or so local authorities. In that circumstance you can give ongoing advice but although it looks obvious looking back, for that inspector on that day looking at a number of things, I have to say I don't think it clicked quite what a sensitive—

Chair: I have to say that the only thing that seems a bit odd about that is that we saw at the time a lot of e-mail exchange—

Q137 Mr Bacon: It did look like a campaign. I have one final question on this from, as it were, the other side of the coin. Ms Patel from the BBC confirmed that one of the things they then do is give HMRC in detail a list of the entities and people associated with them who have been paid these moneys. Do you then systematically and as matter of course, knowing that you have this list of people have been paid gross through personal services companies, go back and make sure that the right amount of tax has been paid as a separate process from the one-off business that would happen anyway of a person doing their tax return and it being looked at? Do you, knowing what you know, go a stage further to double check that the right amount of tax is being paid, or do you just accept that each person files a tax return and that's that?

Lin Homer: No. Very much part of having a customer relationship manager is first of all, over time, to get the best practice we can in any large employer. We would much rather it was done right first time. But in drawing out information we will do checks, usually risk-based checks. There are a number of different types of intermediary. If we can see a number of people coming

through an intermediary, and normal arrangements for PAYE and NI contributions through that, we will not necessarily go through every line. But if we can see an arrangement where it is not clear that the tax is flowing we will use that as an indication to conduct an investigation—

Q138 Chair: You said that, but we always face a problem. I appreciate that you cannot talk about an individual's personal circumstances, but I get the person at the BBC telling me this story that they have for almost 20 years been forced on to a personal service company, and we get the case from the Student Loans Company, which to all intents and purposes appeared to us not to be a legitimate personal service company structure. We have an appendix, which I am not sure you have seen, although you probably helped put it together, which showed the number of investigations Revenue and Customs has done on IR35.

Lin Homer: Yes.

Q139 Chair: If you look at that, what completely took me by surprise is that in 2005–06 you did 2.3 million, give or take a bit, but by 2009–10 you were only doing 155,000 or by 2010–11 219,000. Why? This is clearly an issue, which okay the public has alighted upon, but why have you done so few investigations?

Lin Homer: I think the figures you are quoting are the tax yielded, not the number of inquiries—

Chair: Ah!

Lin Homer: The number of inquiries has substantially dropped—

Chair: It has dropped; yes, it has gone down.

Lin Homer: I do not know if I have seen exactly what you have in front of you but, yes, we did provide the information. I think the explanation would be that when this approach started and IR35 was brought in, there was a significant amount of work to drive home that we would pursue this one way or the other. I think in one year there were over 1,000 inquiries, whereas last year it was about 20—

Q140 Chair: In 2009–10 you did 12, in 2010–11 23—

Lin Homer: Absolutely.

Chair: But the BBC told us that they had—I cannot remember how many—thousands of these things.

Lin Homer: Two things are happening. First, I do not think that we have done enough compliance, but we are building up our teams and will do more. Secondly, there has been a deterrent effect from IR35. What that does not show you is how many people are paying PAYE through their agent firm; we need to be clear that not everyone working through a personal service company is not paying PAYE; many of them are paying it to the organisation they are being employed through. A number of others will be submitting an IR35 at the end of the year. So we think that there has been a deterrent effect, but we have got to give it a good go as well.

Q141 Stephen Barclay: No, no, because the point is, as you correctly say, that it does not matter whether the

¹ See Ev 23

service company is paying it or the employer. But as we established earlier, and as Mr Lester's case shows, there are elements of grey between those who are working for a number of parties, and those who are not and should be paying it.

Lin Homer: Yes.

Stephen Barclay: What the figure that you did just 12 reviews in 2009–10 and 23 last year shows is that you are not investigating that area of grey, to check whether the service companies are indeed paying it when they should be.

Lin Homer: As I said to the Chairman, we clearly need to lift compliance. We are achieving a certain amount through the deterrent effect of the legislation and a certain amount through the work we do particularly with big organisations. One has to give credit to the tax professional industry, which will stay abreast of what is happening, and many will be giving that advice direct to their clients. But we need to increase, and we plan to this year².

Q142 Matthew Hancock: Absolutely. I am almost reluctant to read out these figures, in case reading them out undermines the deterrent effect. I understand why there was a bulge of investigations after IR35 was first brought in—1,016 in 2002–03 and 1,066 in 2003–04; but the idea that bringing that level of reviews down to 25 in 2008–09, 12 in 2009–10 and then, almost doubled, to 23, provokes any deterrent is extraordinary. When you say you need to increase it, to what sort of level?

Lin Homer: I might make you laugh again by saying that we already have plans to increase that tenfold—

Matthew Hancock: Okay, then you are starting to get serious.

Lin Homer: That is beginning to be serious, but we also have to look at the big employers and to do work with them—just as Nick has done on behalf of Government, to get better standards in bulk in places where these arrangements might be used. I do think that the conversations that we have with people about how they organise go alongside that, but I say for the fourth time that we need to increase compliance.

Q143 Matthew Hancock: You are planning to increase it tenfold?

Lin Homer: This year.

Q144 Matthew Hancock: Why did it fall so sharply?

Lin Homer: In all enforcement in compliance, you tend to go in waves.

Q145 Matthew Hancock: Was it because of the resource constraints?

Lin Homer: It was probably because we found other areas—we have discussed this with you on a number of occasions this year. We sometimes get focused on our best return for investigation. As we discussed with you the last time we were here, sometimes you have to go for lower returns to ensure that people are clear that there is nowhere to hide. What we are now getting is the need to keep that balance, and that is where we are at the moment.

Q146 Matthew Hancock: Were there resource constraints that led to this sharp reduction?

Lin Homer: I think there are always places to put your resources. As I said last time, I have £970 million of extra income from the Treasury. I am clear that if I spend that well—the Chair has quoted us getting at least a 10:1 return. I am clear that if you asked him now, Nick would confirm that if we could get that rate of return he would give me more money.

Q147 Matthew Hancock: Can you confirm that?

Sir Nicholas Macpherson: I am a humble official. It is not an issue for me.

Mr Bacon: You are an official anyway.

Q148 Matthew Hancock: Of the 23 reviews opened by HMRC in the last tax year, how many were into public sector bodies?

Lin Homer: I do not know off the top of my head. Obviously, even if it was all of them, it is not a very big number.

Q149 Matthew Hancock: No, but can you let us know? Private compliance with IR35 is important and one thing, but the taxpayer funded public sector, including the BBC, has a greater burden of responsibility to ensure that it is not avoiding tax.

Lin Homer: What I can tell you is that we have about 250 people working with central Government generally on tax issues—not all on this type of tax issue, but about 60 of those people are experts in this area. I am confident that we have been doing work in this area.

Q150 Matthew Hancock: The numbers show that you have been doing work. The question is whether the work is significant.

Q151 Chair: It would be interesting, given the conversation we have just had with the BBC, if you could give us a proportion of the BBC's personal service contracts that you have looked at in detail.

Lin Homer: I will see if I can give you those. What I want to say is that when you look at the overall number of the people you are talking with—from local government, civil service and the BBC—there are usually at least three different types of arrangement. Some are employed. Where that happens, we will expect the engaging organisation to deduct tax. Some are employed through an intermediary, and in those cases, it is a relatively easy question for us to establish that they have a payroll and that people are flowing through that payroll. We do not necessarily have to go and tick off everybody concerned. There is a smaller number where there are indicators of higher risk, and those are the ones that we really need to go after with some vigour.

Q152 Chair: May I go back to BIS? In the Treasury report, there is a chart; BIS is a small Department. I do not know how many people are in BIS, but it is not that big.

Howard Orme: Ten times as many people work in the BIS family as work in the core Department, so it is a Department of about 27,000.

² See Ev 33

Q153 Chair: As big as that. Do you count everybody working in universities?

Howard Orme: No, not universities.

Q154 Chair: Right. You are the second highest Department—one would expect the Department of Health to be high—in terms of use of personal service contracts. A high proportion—about a third—have been on personal service contracts for more than two years. Why?

Howard Orme: I do not think that is personal service contracts, it is those who are off payroll. Of the 364 off payroll, there are 40 personal service contracts. It is a significant number.

Q155 Chair: Page 8, chart 2a, “engagement length by sponsor Department”.

Howard Orme: Yes, that’s of the 2,400 off payroll; those are the proportions. I think you were—

Q156 Chair: So you are the biggest culprit, bar the Department of Health. Can somebody explain? It was a really difficult chart. Mr Hague, did you write this chart?

William Hague: I co-chaired the committee that looked at this.

Q157 Chair: Explain it to me. Did I misinterpret it?

William Hague: No, you did not misinterpret that BIS was second, but I think the point that Howard was making was that they were not all personal service companies. Of course, this includes people through other vehicles, intermediaries, agencies or maybe even self-employed who are in there as well.

Q158 Chair: Why do you use all those mechanisms? It is more than any other Department, other than the Department of Health, which we will come back to.

Howard Orme: In terms of the characteristics of our use of these, we are very similar to the average use when you look at the characteristics—length of service or anything else.

Q159 Chair: Why? Why do you use more?

Howard Orme: We use a lot of this because we have 60 partner organisations who are in delivery who are often in the IT delivery space. We also have the Technology Strategy Board, which has a particular use of specialism. Within the public service ambit, in the type of operations where these mechanisms are used, we just have more of them than most.

Q160 Chair: You have more people working in IT?

Howard Orme: For example, we have major programmes in the schools funding agency and the Student Loans Company—

Chair: Everybody has major programmes.

Howard Orme:—which are more in the delivery end.

Q161 Stephen Barclay: Is it because of the number of non-departmental public bodies that the Department has?

Howard Orme: Yes.

Q162 Stephen Barclay: Therefore, you are using this as a vehicle in terms of the management of those? Is that right?

Howard Orme: In terms of delivering specific programmes that they do. This type of work—

Q163 Chair: It seems from what you have just said that the Technology Strategy Board comprises a bunch of people who are highly paid. Is this a way of paying them more, without breaching guidelines on civil service pay? Is that what you are doing?

Howard Orme: I don’t believe it is. I—

Q164 Chair: You’re bound to say that, but it looks like that. Let me put it to you that your only explanation is, “We have the Technology Strategy Board.” I think, Technology Strategy Board, right, that is a bunch of quite highly paid people. You want to get around Government controls on pay so you shove them into a personal service company.

Howard Orme: The Technology Strategy Board has 49 arrangements of this type.

Q165 Chair: Forty-nine? Why?

Howard Orme: They have unwound 11 of them and made 38 offers of employment to the others.

Q166 Chair: But why? You are not answering why.

Howard Orme: I am just saying that is the scale of the issue. The Technology Strategy Board was set up, I think, in 2007 on a flexible basis. The type of programmes they do come and go—

Q167 Chair: Why? Can you just answer why?

Howard Orme: They use a very flexible resourcing model. That is now being reviewed. We have accepted, and we have had the support of the chair and chief executive, and they have moved that model on to a more sustainable basis, and those are captured by the civil service controls.

Q168 Chair: Why do they use a flexible model? Why?

Howard Orme: Historically, because of the nature of the type of work they do, which is setting up programmes with business and making the transition of technologies into programmes. They are very programme-based. It is a bit like in IT; you put together a team that is sector-specific. If that flies, it flies. If it continues for a while, you do it, and then your priorities move. That was the original architecture. That has now moved on, as these programmes have themselves.

Q169 Stephen Barclay: Can I just check? Given the myriad arrangements you are saying are in place, have you paid or have any of those individual agencies paid for tax advice, vis-à-vis those arrangements?

Howard Orme: I cannot answer that question; I don’t know.

Q170 Stephen Barclay: Could we have a note within a week with the answer to that, please?

Howard Orme: I will endeavour to do that.

Q171 Meg Hillier: Is there any connection between at least some of these companies and the need for some individuals to have professional indemnity insurance so that, if there were a problem—whether in the Department or across Government—action could be taken against that? I understand—you may know more than I do—that it is harder to do that as an individual than through a company structure.

Howard Orme: I think that's one of the papers that—

Lin Homer: I think there are sometimes legitimate reasons why specialists want to be part of a company, rather than to be on the books of the engaging organisation. HMRC uses a number of expert witnesses, so if there is a case on petrochemicals, we may want to hire a petrochemical expert. You will sometimes find that those people want to stay within a group specialising in their area. They may have insurance. They may in some other areas have particular expertise or equipment that they want to be responsible for. There may be good reasons for incorporating, and we would stress the advice to big employers that they need to make sure that those reasons are sufficiently good. Both Nick and Howard have indicated that the review has shown that people were probably being drawn into these arrangements without sufficient thought. But I think it is important to say that there can be good reasons for incorporation, and that such arrangements can lead to the right tax being paid. It is important to keep saying that, although I think we all feel that the outcome of the review and the focus on an even higher standard in those very senior echelons of the public sector is right.

Q172 Fiona Mactaggart: I don't know if I am quoting from the same chart as the Chair, but in the Alexander letter about Departments that had most of these employees, one thing that strikes me is the Departments that have people in such roles for more than two years. That feels very close to abusive. Although the Home Office is not one of the biggest Departments in this regard, it is when it comes to the number of people who have been employed through personal service contracts or agencies for more than two years. I think it has the second highest proportion after the NHS, and I wonder why.

William Hague: If the Home Office were here, I think they would probably cite the number of their critical projects, such as caseworking projects, and say that although they would love to have individuals with specialist skills in the market on permanent contracts, they are simply unable to get agreement with those individuals with the niche skills that they require. That is what many of the Departments said during our review and gathering of data for the report. Although we would like people with niche skills such as IT architects, and project and programme management specialists to be brought in permanently, they prefer to work flexibly. Of course, it is fair to say that, with hindsight, when the right individuals were in, Departments did not work hard enough to move them off those contracts back into permanent employment in the Department.

Q173 Fiona Mactaggart: Isn't there a big problem for the Government here? I managed to miss the statement

earlier today on the Olympics because this Committee was meeting, but it seems to me that there is an example there, whereby the Government has turned to the Army to deal with a process that it had contracted out. We seem to be losing skills in the public sector, and we do not seem to have a sufficiently robust risk management method to make sure we keep those skills. We will need project management skills in the public sector. There is no doubt about that. If we want value for money, which is the job of this Committee, we need those skills to rest in the public sector so that we do not constantly have to buy them in. I want to know from one of you—I don't know which of you can answer this—how you are going to remedy that.

Sir Nicholas Macpherson: Why don't I go first? This is something we have discussed a number of times in the past. It is clearly in the public sector's interest to build and retain capacity. We occasionally have small success stories. I have occasionally talked to you about the Treasury. If a bank were to collapse tomorrow—I hasten to add that I am confident that that will not happen—the Treasury would be far less reliant on investment bank support because we have built up in-house expertise. Even on the very low pay that the Treasury tends to offer its staff, we can retain staff by virtue of the interest of the job. Admittedly, we sometimes struggle, but we retain enough people.

One of the key planks of the recent White Paper on civil service reform, which was published a month ago, is precisely this: how do we build capacity? There are some good examples, through the Major Projects Authority, where we have developed and retained expertise, and very occasionally this Committee sees a project that has been managed well and comes in on budget and on time.

Fiona Mactaggart: You are quite right that that is very occasionally.

Sir Nicholas Macpherson: Yes. The challenge for the management of the civil service is to build on that. The easy option would be to get your cheque book out and hand out large salaries. Indeed, that would be one way forward, but I do not think that that would be acceptable to the public. We need to develop a pay system that is just a little bit more responsive to paying the really hard-to-retain people a little more. That is not about making them millionaires, but there are issues there. That probably does not give you total reassurance, but I want you to understand that civil service management takes this very seriously and is trying to come to a solution on it.

Q174 Mr Bacon: Can I pursue that a little more? The National Audit Office faces this problem, because it trains chartered accountants. It recruits graduates and the Comptroller and Auditor General has told us in the Public Accounts Commission that there are issues for him and the NAO in retaining people, because there is a big market out there of chartered accountancy firms that can hire people, and audit firms and management consultancy firms that like trained people. There is a big flow of those people and to some extent the NAO has to be able to respond to that. There is also the question of what professional training you are offering. This may be a question for you, Sir Nick, or it may be for Mr

Hague—by the way, I have been dying to ask you, are you the William Hague?

William Hague: To me, I am.

Q175 Mr Bacon: I am reassured. I want to know something, however. You have a finance qualification. It is very reassuring that in Departments now the vast majority of what used to be called principal financial officers—they are finance directors now—have a finance qualification too. You are in the HR sphere and are a chartered member of the Chartered Institute of Personnel and Development and it is plain, whether you are talking about finance or HR or legal, that there has been a growth in professionalisation, which is welcome. Either one of you or both can answer this, but are you taking a same approach to programme and project management, because there is plenty of evidence out there that it makes a difference?

This Committee, when we were recently in Washington DC, met with the Project Management Institute. We have met them over here. We also met the Association of Project Management. I am not prescribing or suggesting which route you should go down, although there might come a point when you decide that you should go down a route, but how far advanced are those discussions and what difference will it make in terms of developing and growing in-house a programme and project management capability? It is surely what you have lacked and is surely what you need.

William Hague: Large steps have been taken. More are planned and are in the civil service reform plan, as Nick has set out. In terms of professionalisation, it was right for me in my career. It has been obvious over the past two or three years that we need to professionalise if we are to improve the public sector. That worked well for me in terms of finance as well. That is why we set up the Major Projects Authority for project and programme management. It is why in 2013—this is set out in the civil service reform plan—a commissioning academy will be set up. I think that what has happened over the past five or six years is that the heads of profession have grown in power and in their ability to push things through the system. The civil service reform plan sets out that heads of profession need to take a more proactive role to ensure that we are growing our own. Part of the genesis of the 2,400 that we have been speaking about and the charts is the fact that we have not grown our own and this is about growing our own.

Sir Nicholas Macpherson: I very much agree with that. This is about building and retaining in-house capacity. I believe that it can be done, but it requires far more careful development and management focus on how you retain talented staff.

Amyas Morse: Just a point of information. Do bear it in mind that we heard from the Major Projects Authority that it had set up a major projects academy. There is something happening. Admittedly, it is not for vast numbers of people, but it is a start. I absolutely agree with the thrust of what you are saying, Richard, but I do think there is an attempt to start building that expertise in the civil service, which I welcome.

Q176 Stephen Barclay: The White Paper said that Permanent Secretaries of operational Departments must, moving forward, have two years' operational/commercial experience. Given that 70% of the civil service are in operational roles, is two years' experience for a Permanent Secretary really a stretching target?

Sir Nicholas Macpherson: It is a start; it is symbolic. The reality is this. Take my very distinguished colleague sitting next to me. Lin has led a large number of big organisations, from Birmingham city council onwards. The days when you had a gifted amateur running big operational Departments are, I think, behind us.

Q177 Stephen Barclay: You mention Ms Homer. In a way, that is a case in point. Quite a lot of people, including Sir Gus O'Donnell, commented on the churn in Ministers. Ms Homer, in the last three years, as I understand it, you have gone from running our border force to running our transport system to being now our most senior tax commissioner, which suggests that among officials there is quite a churn in terms of what they are being asked to do.

Lin Homer: It gives me plenty of opportunity to come to see the PAC, but I think the question you asked was about experience of running big organisations. The thing that all of those roles and, indeed, my previous two local authority roles have in common is large numbers of staff, large amounts of project activity and large amounts of service delivery, so those are common themes.

Q178 Stephen Barclay: The point was slightly different. The point was: are you in post long enough? Was the period that you had at the Department for Transport long enough?

Lin Homer: No, I don't think so. I would not have moved after 12 months were it not for the extraordinary circumstances in HMRC.

Sir Nicholas Macpherson: It would have been nice for Lin to stay at Transport longer, but there were special circumstances. Admittedly, I am biased, as I am entering my eighth year in post as Permanent Secretary at the Treasury, but I do think it is in Whitehall's interest to have people in senior posts who are there for a reasonable length of time, not least so that you can hold them to account. I cannot blame my predecessor any more, whereas a lot of my colleagues can.

Q179 Stephen Barclay: But you are an exception. Three quarters of Permanent Secretaries have moved since the general election—the Department for Transport has had three Permanent Secretaries since the general election—so there is an issue.

Sir Nicholas Macpherson: I hope it is a transitional issue. I think it is important to have people with experience who stay the course.

Q180 Mr Bacon: What are the Government doing to alter that? I heard Sir Andrew Turnbull, when he was Sir Andrew Turnbull, making exactly this point many years ago. I know I'm going off-topic, but this is really

interesting. What are the Government doing institutionally to make this change stick?

Lin Homer: Although you can point to particular examples—my stay in Transport was very brief—if you look more generally, most of us have done reasonable lengths of time. I spent five and a half years in the UK Border Agency. Indeed, prior to the DFT period, the shortest time that I had ever spent in a single job was three years. If you look at most of the Permanent Secretaries, they expect to be in position for three to five years at a minimum. There is a movement going on that. In the civil service reform, there is a proposition that SROs should stay for the duration of their projects.

Q181 Mr Bacon: I am talking about the two or three jobs prior to that. My question was: what institutionally is being done to help to make this change stick, because we do see a lot of this churn? I remember a Cabinet Minister saying of his policy area that after 18 months he knew more about it than the officials who were briefing him, and we weren't talking about Permanent Secretaries; we were talking about those lower down.

Chair: Richard, I am going to stop you there, because there is a lot to do. We will, I promise, come back to this issue, because it's hugely, hugely important.

Q182 Stephen Barclay: Coming back to the topic for the hearing, could I clarify something? Were the 2,400 cases that were examined as part of the review considered for tax avoidance? Assuming not, how many of those are going to be reviewed for tax avoidance?

Sir Nicholas Macpherson: The review just identified the particular ways in which these individuals were employed. It explicitly did not go into their tax affairs, mainly because there was real urgency and we wanted to get the review done, come up with results, introduce some changes and move on. We always recognised that there was a very legitimate tax interest in these individuals. Therefore, in effect this issue is handed over to HMRC.

Q183 Stephen Barclay: I appreciate that for phase 1. We are now on to phase 2, HMRC. How many of these are you going to review?

Lin Homer: We have had an initial look across the whole 2,400. We have divided them into three tranches of highest risk, medium and low. We have started with the highest risk, because that makes sense, but we will have a risk-based look at all of them.

Q184 Stephen Barclay: How many are in each tranche?

Lin Homer: There are three different sorts. About 85% are employed through an intermediary company. With those we have an opportunity to do a high-level look and see whether PAYE and NICs have been paid on the people going through. That will allow us, we think, to leave those not completely, but—

Q185 Stephen Barclay: You said there were high, medium and low risk. How many are there of each?

Lin Homer: We would put those into the low risk and then there are 15% that we think are worth a quicker look. You know that, with initial judgments like that, you will always find some in the higher risk that prove not to be. When we go through the lower risk, I am sure we will find some that we will escalate.

Q186 Chair: So you are going to look at all of them in that 15%.

Lin Homer: We will make a risk-based judgment on the level. We will look at all of them. The depth to which we will go will depend on what we see when we first go in.

Chair: Blimey. That's a bit more than 20-whatever.

Q187 Stephen Barclay: How many are high risk?

Lin Homer: Well, 15% are in categories that sometimes give indications of high risk.

Q188 Stephen Barclay: You said there were three categories. Perhaps my maths are slow, but if 85% are low risk and 15% in middle risk—

Lin Homer: Within the other two, there are those where the arrangement would have required the engaging organisation to take some action; in other words, the Government Department. There are those where there is evidence of effectively self-employed status, and we will go on to those. So, there is 5% and 10% in the other two tranches.

Q189 Stephen Barclay: So, there is 5% and 10%. The tenfold increase that you mentioned earlier to Matt—the 230 cases—are those separate to these?

Lin Homer: We will do a number of these separate from that, yes. I don't want to draw all my resource away from the rest.

Q190 Stephen Barclay: In other words, when you say you are going to look at 230 moving forward, that is not including these.

Lin Homer: That had been our aspiration before these came in. We will use our Government team to look at these without diminishing our resources.

Q191 Stephen Barclay: Given the Committee's earlier concerns, what commitment can you give us on reviewing BBC cases? How many BBC cases will you be prepared to look at?

Lin Homer: We have a CRM, as I think the BBC told you earlier, so I think I would want to take an initial look at the kind of arrangements they have in place, and then do some risk analysis. As we told you last time we were here, when information is made available, sometimes in bulk, we set out mind to it and work through that. There is definitely some work to do with this.

Q192 Stephen Barclay: So you will do a risk assessment to determine that.

Lin Homer: Yes. As I said earlier, I want to emphasise that we are not assuming, and I ask the Committee not to, that everybody involved in those arrangements is not already paying tax. We anticipate seeing a very high proportion of these people who are already sorting out

their own tax arrangements. There is not an absolute jump from personal service company to not paying tax.

Q193 Stephen Barclay: No one is suggesting that. One issue for the Committee is whether it follows up effectively. Can I get an assurance that within three months you will write back to the Committee, or liaise through the NAO if there are issues of confidentiality, with an update on the risk assessment, a breakdown of how many BBC contracts and the work commitment you would put into that, and an update on the 15% middle-high risk and what work will be done on that population?

Lin Homer: I am happy to do that. The amount of detail we give you on the BBC will depend on how much I can do within taxpayer confidentiality.

Stephen Barclay: It depends on how much work you do.

Q194 Matthew Hancock: I want to push the question of the interaction of this and civil service reform. Mr Hague, you have so far given an impeccable performance, not least because you have managed not to say very much, but I am now going to challenge that. You were saying that civil service reform and the agenda outlined by Sir Bob will mean that you have more home-grown talent and therefore less need to buy in external talent on a short-term basis. Wouldn't more flexible working within the civil service also push the other way and mean that if you have more interaction for civil servants between private and public sector work and people coming in and out, as opposed to a monolithic career structure, you will have more use of personal service companies?

William Hague: No, I don't think so, but there are two things that you brought out with your question. First, if we are moving more flexibly—as we are in, say, the Cabinet Office and in the Efficiency and Reform Group, where we have a flexible resourcing system and more interaction with the private sector—it will be through secondees that we will see the specialist niche skills come in. Because a secondee contract is very different from the things that we have discussed today, I don't think that that would see any increase in personal service companies.

In terms of growing our own, part of the civil service reform plan, as you will have seen, talks about a five-year capability plan looking at the deficits of skills with a particular focus on specialisms—but not only specialisms—such as HR, legal profession and project and programme management. That is due to be published in the autumn. As that is published, we will look at ways of bringing in that expertise and growing that expertise from within. I don't see why that, aligned to a flexible resourcing system, would require any addition in terms of personal service companies or people off-payroll. So it is doing both at the same time.

Q195 Fiona Mactaggart: I am wondering how you ensure that this policy works beyond the Whitehall bit of public servants. Specifically, the Alexander report refers to foundation schools and NHS trusts, but I am also interested in the odd little departments. One of things that I looked at was the Equality and Human

Rights Commission, which has put aside £1.8 million—5% of the whole budget this year—to pay consultants. I am just wondering whether that means that they are actually following your guidance, or is someone doing something about this fact?

Sir Nicholas Macpherson: There are long-standing conventions around what the Treasury's concordat with Parliament, through this Committee, covers. You had the BBC here earlier today. They are not covered by "Managing Public Money".

Q196 Chair: The EHRC are though, aren't they?

Sir Nicholas Macpherson: They should be, yes. They would have an accounting officer and that accounting officer will have been appointed by the accounting officer of the sponsoring Department. I am now struggling to remember which Department the EHRC—

Q197 Chair: Mr Hague, can you help on this, because you must have looked at it?

William Hague: I think it is the Home Office.

Q198 Chair: What is the answer to Fiona's question, because it is rather worrying?

William Hague: Anything that comes under the auspices of a central Government Department such as the Home Office or, for example, DCLG would absolutely have to follow the control that is set down by the accounting officer.

Q199 Mr Bacon: Is that why, on the day that the story broke, they ran through a whole load of interims very quickly?

William Hague: They should not be able to do that.

Q200 Mr Bacon: That's what happened. I remember that I happened to go on "Newsnight" that evening to talk about it and I was told half an hour before I went on that the Equality and Human Rights Commission had run through 17 or 18 new appointments that very day.

Sir Nicholas Macpherson: My recollection is that it has had a few troubles. I think it may be in the process of being reformed, which may create a context where you need more interims. If you have an agency that is closing down or being reformed, it is sometimes difficult to retain people and you are more likely to end up employing interims. Nevertheless, they are part of our framework and they should be accountable.

Q201 Chair: Can we ask you—Mr Hague, I think it falls to you—to let us have a note on the specific issue that Fiona Mactaggart has raised, within a week, please? If they are not complying with the guidance, that is of concern to the Committee.

William Hague: I can ask the relevant Department to provide that note, yes.

Q202 Chair: Whatever. We want it in a week, if that's all right. Can I just ask about the NHS? Am I absolutely clear now that every foundation trust and every commissioning group will be covered by the rules laid down by the Chief Secretary?

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and Cabinet Office

Sir Nicholas Macpherson: Yes, they certainly should be.

Q203 Chair: Should be? Will be?

Sir Nicholas Macpherson: Will be. They will be writing to all their relevant bodies to remind them of the rules.

Q204 Chair: Who is accountable for that?

Sir Nicholas Macpherson: I am not an expert on the current framework within the NHS but I think this is the sort of thing you should ask their main accounting officer Una O'Brien and Sir David Nicholson, the chief executive.

Q205 Chair: Perhaps we can have that as a question when we see them in September on financial health. As my final question, there are always wobble-words in these documents, and if I look at your document, Mr Hague, in paragraph 3.12 you accept that there will be a small number of senior civil servants on non-standard contracts. In paragraph 4.5, you talk about exceptional circumstances. I just wanted to tease out of you what that means, how many we have and how many you expect to end up not paying their PAYE and NICs. Explain that to us.

William Hague: Paragraph 3.12, where we talk about non-standard contracts, does not relate to whether they are being paid off-payroll or not. This is predominantly approximately, off the top of my head, 100 senior civil servants who have non-standard contracts where more of their pay is at risk. When they were brought in, usually from the private sector, they did not take as high a salary as the equivalent grade within the civil service but their opportunity to earn a bonus was higher than that of normal civil servants. There were around 100 of those contracts, and we wanted to make absolutely clear that that had to be stringently looked after and reviewed in the same way as any of these cases. That is what paragraph 3.12 relates to. Proposals will be introduced as to how non-standard contracts could be put forward in the future, probably with the Minister for the Cabinet Office signing those off.

In terms of paragraph 4.5, this was merely to ensure that in exceptional circumstances—

Q206 Chair: Like? Give me an example. What is an exceptional circumstance?

William Hague: In the review we did not come with a particular example and think, "In this case"—

Q207 Stephen Barclay: Can you define it for us? To take another example, we saw that when it was

announced that there was a recruitment freeze except for essential front-line services, each Department was free to interpret essential front-line services as they saw fit, so they could drive a coach and horses through the definition. "Major projects" was not defined prior to the Major Projects Authority being set up. Where do I go to read what the definition is of exceptional circumstances?

William Hague: There is no definition.

Q208 Chair: It just gives you that wiggle room, which we feel a bit uncomfortable about.

Sir Nicholas Macpherson: The accounting officer will have to approve each of these exceptional circumstances, so he or she must be able to explain to this Committee why they did it. Such exceptions should exist for no longer than six months, which I think gives you an additional assurance. I can envisage, going back to the example we were discussing earlier, that in a state of real urgency you might want to have an interim on a special basis just to ensure the organisation was managed. It is very clear, however, in terms of recommendations—the Chief Secretary has written out to Departments this week with guidance on how to carry out the recommendations—that you cannot do it for any longer than six months.

Q209 Stephen Barclay: The six months is a clear control, Sir Nicholas; I get that. What I do not get is that if each Department's accounting officer is free to define what "exceptional circumstances" is, and BIS was paying for tax advice to try to get the student loans one through, in that circumstance I am sure that the accounting officer would agree to the definition of exceptional circumstance so that control would not work.

Sir Nicholas Macpherson: I think we have all learnt a lot from this exercise. It is a long-standing principle that the public sector should not indulge in tax planning. This has been a very strong wake-up call that the days of tax planning in the public sector are over. Personally, I would like to have far fewer of Lin's people working on public sector cases, because the public sector should get a grip and ensure this does not happen. We are going to review the data in a year's time. If there are still lots of outstanding cases, I think that all of us will need to return to the drawing board and introduce more stringent controls.

Q210 Chair: Will you publish that review?

Sir Nicholas Macpherson: Yes—he says, looking back at the author of this excellent review.

Chair: Thank you very much indeed.

Written evidence

Written evidence from the BBC

The BBC welcomes the opportunity to contribute to the Committee's inquiry into the tax arrangements of senior public sector appointees. Whilst the HM Treasury *Review of the Tax Arrangements of Public Sector Appointees* recognises that the BBC is independent in the management of its affairs under the Royal Charter, we are committed to promoting transparency in BBC reward arrangements.

At the BBC, there are a number of overriding principles that we follow in this area. Firstly, everything we do is in line with HMRC guidelines, and we work closely with them to ensure that contracts do not result in any loss of revenue to the Exchequer. Secondly, we work extremely hard to make sure that we do not incur unnecessary costs that are ultimately borne by the licence fee payer. At the same time we need to make sure that we support Britain's creative industries by giving specialist staff the ability to move around where necessary.

None of the BBC's executive, members of the BBC Direction Group or Divisional Boards are engaged via a service company as a matter of policy. However, we have recently reviewed all of the service companies contracted directly with the BBC and nobody in a senior management position at the BBC (for example, anyone running a department or a division or with responsibility for the direction of the BBC) is contracted via a service company on a continuing basis. They are all employees. In this review, we terminated two of our service company arrangements and contracted them on full employee contracts as the nature of their work had changed.

At the BBC, as in other organisations, there are a variety of ways in which we pay people contracted by us. It is common practice across the whole broadcasting industry for individuals to work on a freelance/self-employed basis, moving from one broadcaster to another, for short periods of time (often days rather than weeks) and/or for specific pieces of work. Typically these roles are in areas such as acting, directing, producing, editing and other craft skills as well as presenting and ad hoc projects. The majority of these workers do not work exclusively for the BBC but also regularly work for other organisations in the industry on a similar basis, and BBC work typically accounts for only a proportion of their overall working time during the year.

There are a number of ways in which the BBC engages workers off payroll.

FREELANCE CONTRACTS

Actor, Singer or Musician (Entertainer)

Specific HMRC guidelines cover the engagement of entertainers, treating them as self-employed for tax but as an employee for NIC purposes. The BBC is obliged to withhold NIC from payments made to Entertainers and to account for Employers NIC on these payments. This is entirely consistent with the industry and HMRC requirements and there are approximately 50,000 separate engagements per annum in this group.

Modus Operandi

HMRC guidelines operate within the TV, Film and Radio Industry that allow sole-trader freelance contracts to be entered into with anyone meeting the requirements of the Modus Operandi. The requirements generally cover set roles agreed by HMRC (behind camera/microphone) and the duration of the role, on a specific programme or strand of a programme. These guidelines are used across the industry. They are paid on submission of invoices with no tax or NIC withheld.

Self-employed tests

HMRC provide an on-line tool to evaluate a contract to determine if it would be regarded as self-employed or not. Where the HMRC evaluation confirms a self-employment position, a self-employed contract would be provided by the BBC. There are approximately 9,000 separate engagements per annum in the Modus and self-employed groups (mainly the Modus category).

SERVICE COMPANIES MODEL

Workers

Service company contracts will be provided where there is a short-term requirement to obtain specialist skills or advice and the individual required contracts via a service company. It would not be value for money for the BBC to only offer on-payroll type contracts in this area as the skills required are not needed on a permanent basis but for fixed duration of projects and programmes. This category includes IT development, technology and project managers and specialist TV broadcasting groups such as directing, editing and other craft skills where this method of contracting is the norm for people working across the Industry.

Each year, the BBC engages around 12,000 individuals who are contracted as workers (ie not employees), of which around 3,000 are contracted via a service company,ⁱ with the remainder either freelance or self-employed. On average, all freelancer categories return 5.5 times a year, reflecting the fact that they regularly work elsewhere in the industry.

Because freelancers are paid on receipt of invoices for individual pieces of work, it is not always possible to align individuals to an annual fee. Nevertheless to aid the Committee, we have identified the number of individuals currently engaged via service companies, whose current contract value is £58,200 or more.ⁱⁱ As at 9 July 2012 there were 30 service companies with a purchase order value of £58,200 or more.

By using the service company framework, which is set down by the HMRC, the BBC and other broadcasters can quickly and effectively contract people without having to undertake a lengthy detailed review of all their other work.

The service companies are not set up to help avoid tax. Once a service company is created, the individual has to pay the correct tax and National Insurance (See attached link to HMRC website <http://www.hmrc.gov.uk/ir35/>). We cooperate fully with the HMRC and provide them with annual reports of all payments made to individuals who operate service companies and provide all details required on any review they undertake. In addition to this we stipulate in our contracts that we expect individuals to settle their tax liabilities according to the HMRC guidelines in full.

Where individuals are engaged via a service company, it is their responsibility to organise their tax arrangements directly with the HMRC. HMRC guideline IR35 ensures that “if the relationship between the worker and the client would have been one of employment had it not been for an intermediary the worker pays broadly tax and NICs on a basis which is fair in relation to what an employee of the client would pay”.

In addition, approximately 400 temporary staff in any one month are engaged through an employment agency, which is responsible for deducting tax and National Insurance.

On-air talent

In common with every other UK broadcaster, the BBC makes use of service company contracts for presenters who often have work commitments outside of the BBC in any given year and presented their services to the BBC and any other engager on self-employed terms. Such arrangements are common across the Broadcasting Industry. By using the service company framework, set down by HMRC rather than a direct contract with the individual the BBC ensures that IR 35 applies and the correct tax is payable.

It has been suggested that we have forced people to set up service contracts rather than being a full-time employee. This is not the case. We are not aware of any instance where someone who is eligible to be a staff member has requested this status and has been denied it.

The model that the BBC applies is the industry standard and we comply fully with long-established HMRC guidelines.

REFERENCES

ⁱ These numbers fluctuate owing to the temporary nature of the work.

ⁱⁱ The figure used to define Senior Civil Service minimum, as referenced in HM Treasury *Review of the Tax Arrangements of Public Sector Appointees*.

July 2012

Written evidence from HM Revenue and Customs

Ahead of the hearing next week, I am attaching a copy of a general aide-memoire on employment status, personal service company and IR35 matters in case members of the Committee would find it helpful to have some core information to hand. The material consists of a covering narrative about employment status by way of general context with five attached annexes which explain in a little more detail:

- The employment status case law tests;
- The different forms of employment status intermediaries;
- A list of non-tax reasons individuals might incorporate;
- A list of some of the tax/NICs advantages of incorporation;
- A note of how IR35 payments need to be calculated and reported; and
- A chart which identifies the contracting arrangements involving personal service company intermediaries.

I would, of course, be very happy to discuss any aspects of this material further, as well as talking about the broader points I expect members will wish to raise. If the Committee would find it helpful, I'm very happy to talk you through employment status in advance of the session.

EMPLOYMENT STATUS CONTEXT

Employment status is decided by reference to the facts of the working relationship between the worker and the person who engages them, informed by a series of case law tests (*annex 1—employment status case law tests*).

People don't always work directly for their engager. They can work through any one of a number of different intermediary bodies instead (*annex 2—status and intermediaries*).

One example of this is where someone incorporates and works through a "Personal Service Company" (PSC) (*annex 3—reasons to incorporate*).

Anyone engaging an incorporated worker is entering into an arm's length commercial arrangement with the PSC which then supplies the worker's services. This means the engager can pay the PSC gross, and that there is no employment relationship between the engager and the worker.

There can be tax/NICs advantages for all parties where services are provided through a PSC (*annex 4—tax advantages of incorporation*).

These advantages include the fact that there is no employment relationship between worker and engager, meaning:

- the engager has no employer obligations to the worker (those obligations rest with the PSC instead); and
- the worker can choose to take reward out of their PSC in the form of a small salary, plus mainly dividends which are taxed at a lower rate than salary, regardless of whether the services they provided were on terms more akin to self-employment or more akin to employment (*annex 1- employment status case law tests*).

IR35 was introduced to address the tax/NICs implications of PSCs being used to disguise what would otherwise be an employment relationship (*annex 5*). It:

- does not affect the legitimate commercial relationship between any of the parties, but it says that, where the worker is providing services on terms more akin to employment does not take all the relevant reward out of the PSC in the form of payrolled salary, then the PSC must apply a statutory formula at the year end so that a broadly equivalent amount of tax/NICs is paid nonetheless; and
- it puts this responsibility onto the PSC even where the engagement chain is more complex and, for example, the commercial contracting arrangements are engager→agency→PSC→worker.

There are a range of other intermediary structures which work in a number of other ways. This reflects the changing nature of engagements (eg, more temporary workers), different commercial drivers (eg, costs of employment), other drivers (eg, attempts to avoid employment law obligations) and, in some cases, tax avoidance/mitigation (*annex 2—status and intermediaries*). For the purposes of the immediate issues under consideration, PSCs are likely to be of most interest.

Lin Homer
Chief Executive and Permanent Secretary

12 July 2012

Annex 1

EMPLOYMENT STATUS CASE LAW TESTS

MUTUALITY OF OBLIGATION

The basic requirement for mutuality of obligation is that the worker will be under a duty to do the work and the employer will be obliged to pay for that work. So if the worker carries out the work and the engager pays the worker for doing that work, then there will be sufficient mutuality of obligation for a contract to exist. It is then necessary to determine if the contract is a contract of employment or a contract for services (self-employment).

CONTROL

Control is a necessary condition of a contract of employment. The engager must be required to exercise a sufficient degree of control over the worker. It is the right to control what the worker has to do, where it has to be done, when it has to be done and how it has to be done. The *right* to exert control is significant, not whether that right is exercised.

PERSONAL SERVICE

An essential element of an employment is that the worker provides personal service. If the worker undertakes to perform a task and is free to hire someone else to do it or to give substantial help, it is unlikely that the worker is an employee.

FINANCIAL RISK

A strong indication of self-employment can be the financial risk which the worker runs in doing the job. The greater the financial risk the stronger the pointer towards self employment. Individuals who risk their own money by, for example, buying assets, bearing their running costs, paying for overheads and materials etc, are likely to be self-employed. Employees do not usually need to risk their own capital.

OPPORTUNITY TO PROFIT FROM SOUND MANAGEMENT

A self-employed person often has the opportunity to profit from sound management of a task. Where the worker quotes a genuine fixed price for a job, then the level of profit or loss will depend on the speed and efficiency of the worker and the capacity to reduce overheads and organise work effectively.

BASIS OF PAYMENT

Arrangement for payment is never a conclusive factor. Typically, employees tend to be paid a fixed wage or salary by the week or month and often qualify for additional payments such as overtime, long service bonus or profit share. Independent contractors, on the other hand, are often paid a fixed sum for a particular job.

PROVISION OF EQUIPMENT

Where a worker is required to, and does, provide major items of equipment, which are fundamental and necessary for the work being carried out, then this is usually an indication of self-employment. Whilst not conclusive, where an engager provides the necessary equipment, this is a pointer towards employment.

PERSONAL FACTORS

Personal factors are personal to the worker and are particularly relevant where a worker claims his business consists of providing his personal service and skill to a number of clients. We must take into account where a worker does other similar work and has a business set up. What we look to establish is if workers regularly worked for a number different contractors.

LENGTH OF ENGAGEMENT

The length of engagement is neutral in determining employment status, but in general, the longer the engagement, the more likely it is that it will be a contract of service and the shorter the engagement, the less likely. This is not because of the length of the contract itself, but because the other factors are more likely to indicate this to be the case.

PART AND PARCEL

We look to see if the person is carrying on a business outside and separate from the organisation they are undertaking work for or whether they are an integral part of the organisation.

EMPLOYEE TYPE BENEFITS

Generally speaking, statutory entitlements to benefits such as paid leave, sick pay, and maternity pay & paternity pay and so on, are due to employees, they are not usual features of a contract for services.

TERMINATION

A genuine self-employed engagement would usually be for a specific piece of work or for a specific period of time, and the engagement would end when the work or period was complete. A contract of employment would include a requirement for a period of notice by both parties.

INTENTION OF THE PARTIES

What the parties call their relationship, or what they consider it to be, is not conclusive. It is the reality of the relationship that matters. The intention can be decisive where the relationship is ambiguous and where the other factors are neutral.

EMPLOYMENT STATUS FORMS OF INTERMEDIARY

EMPLOYED VS. SELF-EMPLOYED

- Employment and self-employment are not statutorily defined.
- In determining status for tax and NICs, HMRC applies the principles established by the Courts. These principles are generally referred to as case law.
- There are some special rules within tax and Social Security legislation that do not follow case law principles, rather they deem income to be employment income and/or employed earners' earnings under prescribed circumstances.
- The special rules can broadly be classified into either anti-avoidance provisions: agency workers, Personal Service Companies and Managed Service Companies, or contributory benefit protection provisions: office cleaners, Ministers of Religion, entertainers, etc.

EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES (BIS LEGISLATION)

- The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Regulations) govern the conduct of the private recruitment industry and establish a framework of minimum standards that clients, both work-seekers and hirers, are entitled to expect.
- Both Employment Businesses and Employment Agencies are defined in BIS legislation.
- Essentially Employment Businesses (what most people call Employment Agencies) place directly/indirectly workers with end clients, receive ongoing payment from the end client, and are responsible for paying directly or indirectly, the worker on an ongoing basis.
- Employment Agencies are introductory agencies which place directly workers with end clients for a one-off fee. The end client is then responsible for paying directly the worker on an ongoing basis.

HMRC AGENCY LEGISLATION

- Where the agency legislation is applicable, Employment Businesses and other third parties who supply workers under the terms of an agency contract are required to operate PAYE and NICs on payments they make to workers.
- Where the Agency legislation applies there is no obligation on the client to determine a worker's employment status as there is no contract between the client and the worker.
- This legislation applies where a worker is supplied to a client by a third party, under an agency contract, the worker is under an obligation to personally provide services to the client, and the worker subject to, or to the right of, supervision, direction or control as to the manner in which the services are carried out.

EMPLOYMENT INTERMEDIARIES

- These differ in name (the most common being "umbrella company") but a common feature is that they treat the workers' income as employment income but seek to gain a tax/NICs advantage by linking contracts together for any one individual into an overarching contract to gain access to tax/NICs free travel and subsistence expenses.
- Such companies tend to be mass-marketed and typically have thousands of temporary workers (mostly low-mid paid) operating through them.
- Typically these intermediary companies assume the role of employer (with the worker becoming an employee of the company). They contract with the Employment Business/Agency to receive payments due in respect of the worker's services from which they deduct their fee, PAYE and Class 1 NICs. The balance is paid out in the form of net pay and tax/NICs-free expenses.
- Such companies do not seek work for, or place workers—the workers seek out and agree their own contracts and rates of pay or the work may be offered by an Employment Business/Agency on condition that it is taken up through an employment intermediary.

SELF-EMPLOYMENT INTERMEDIARIES

- These intermediary companies interpose themselves between worker and Employment Business primarily to ensure the worker spurious self-employed status. They do not employ the worker nor do they find the worker work. They provide a limited range of services—usually sufficient to claim that they are acting as more than simply the workers' payment agent, which in reality is what they are. The arrangement enables the Employment Business to contract and pay the intermediary company without the need to deduct and account for income tax/NICs. Because the worker is not employed by the intermediary or placed by it under an agency contract, no obligation to deduct and account for income tax/NICs rests with the intermediary either.

OFFSHORE INTERMEDIARIES

- Many intermediaries operate offshore for the purpose of avoidance. Some are offshore variants of employment or self-employment intermediaries or service companies, and some use more sophisticated Trust arrangements. The extent to which such intermediaries avoid successfully depends on the nature of a particular arrangement, and how effectively it is operated in practice.

MANAGED SERVICE COMPANIES (MSC)

- These are avoidance vehicles defined in anti-avoidance legislation in 2007. An MSC can also be a partnership but it must be a separate legal entity.
- MSCs are corporate structures through which workers' employment income is routed and distributed as dividends (each worker having a shareholding commensurate with their income into the company.)
- MSCs are entirely and tightly controlled by a Scheme Provider who charges each worker an administration fee. Workers have no understanding how the arrangement works, other than they receive a higher take home pay than if employed directly by the party to whom they provide their services.
- At time of the introduction of the legislation the structures were structured by having a collection of workers joined together to form a limited company in which they all held shares. Now they tend to be a number of individual PSCs controlled and administered by the Service Scheme Provider.
- MSCs were widespread across sectors like healthcare, construction and IT. Their numbers have reduced substantially since the introduction of the MSC legislation.
- The anti avoidance legislation requires all money paid out to the workers by an MSC as statutorily defined to be taxed as employment income. Where the MSC has no money, there are transfer of debt provisions to attach the liability to the workers or the Scheme Provider, or to any related third parties who encouraged the scheme.

PERSONAL SERVICE COMPANIES

- Personal Service Companies are the only type of intermediary company which are not necessarily set up for the purpose of tax/NICs avoidance/mitigation.
- Personal Service Companies are not statutorily defined but it is a term that is commonly understood to mean an owner-managed company used by an individual through which to provide their personal services.
- Personal Service Companies are used by a mixture of those whom HMRC would consider are always genuinely in business on their own account, those who may occasionally stray into underlying employment relationships, and those seeking permanently to disguise employment relationships.
- The existence of the PSC means that clients and Employment Businesses contract with and pay a company, not an individual and as such the client/Employment Business has no obligation to deduct and account for income tax or NICs under PAYE.
- Because the individual is also a shareholder, they can choose to extract money from their company as an amalgam of a minimum salary (to preserve access to contributory benefits) plus the remainder in dividends (which attracts no NICs).
- Anti avoidance legislation was introduced in 2000 commonly known as "IR35". The legislation requires the Personal Service Company to consider the company's contracts with its clients and ignoring the interposition of the company come to a view as to whether the underlying relationship was employment. If it was employment, the Personal Service Company must treat the income received by the company from the contract(s), less 5% as employment income of the individual.
- The resulting amount will normally be treated as paid at the end of the tax year, and be taxed as a payment chargeable to income tax as employment income and subject to Class 1 NICs.
- The existing employment status tests are used to decide whether the worker and the client would be a contract of service/employment.
- Because employment status based on case law is frequently less than clear cut, this basis for IR35, allied to the requirement to ignore the interposition of the company, provides ample opportunity for those seeking to challenge IR35 to claim that it did not apply to a given set of circumstances.

Annex 3

NON TAX REASONS FOR INDIVIDUALS TO INCORPORATE

- Incorporation provides limited liability protection—particularly important for those operating in sectors with potentially high financial risk, eg IT.
- Incorporation enables an easier separation between personal and business funds and assets—something which many sole traders find hard to do.
- Limited company status is sometimes seen as having more cache than sole trader status—important particularly in sectors where competition is fierce and public perception is paramount.
- Many end clients will not engage temporary contractors directly, even when placed by an Employment Business.

- Many Employment Business will not engage and place temporary contractors directly, insisting on such contractors operating through a company.

Annex 4

TAX/NICS ADVANTAGES OF INDIVIDUALS INCORPORATING

ADVANTAGES FOR THE INDIVIDUAL

- The individual is able to avoid being subject to deductions of income tax and NICs under PAYE either by the end client, or more likely by the Employment Business.
- By avoiding being classed as an employee by the end client/Employment Business, the rate of pay is likely to be greater (because the end client/EB are not paying employers' NICs).
- By avoiding being classed as an employee, the individual has greater flexibility regarding how and when they pay themselves from their company. Commonly at least part of the income is paid in the form of dividends attracting no NICs.

ADVANTAGES FOR THE INTERMEDIARY PERSONAL SERVICE COMPANY

- Tax/NICs can be mitigated (in addition to distributing earned income as dividends) by paying a spouse up to the Personal Allowance threshold for work notionally undertaken for the company.
- Cash flow advantages in terms the timing of when tax/NICs is payable can be achieved by "loaning " the owner/director money which is then repaid annually at which point tax and NICs is accounted for
- The company may be able to deduct expenditure when computing its profits for Corporation Tax which may not necessarily be an allowable expense if the individual were to claim tax relief against their personal tax liability

ADVANTAGE FOR THE EMPLOYMENT BUSINESS

- Provided that the Employment Business contracts with and pays the Personal Service Company, they sidestep any obligations to deduct tax and NICs under PAYE.
- Other obligations such as Statutory Sick Pay, Statutory Maternity Pay and National Minimum Wage are similarly sidestepped.

ADVANTAGE FOR THE END CLIENT

- Provided that the end client contracts and pays either a Personal Service Company directly, or via an Employment Business, they sidestep any obligations to deduct tax and NICs under PAYE.
- Other obligations such as Statutory Sick Pay, Statutory Maternity Pay and National Minimum Wage are similarly sidestepped.

Annex 5

*How to calculate and account for Tax/NICs using IR35
(see also attached chart)*

- Where IR35 applies, and the full amount in respect of the IR35 contract(s) has not been taken out of the PSC in the form of salary, then, at the end of the year, broadly:
 - the PSC must add up all the payments/non-cash benefits (eg, cars, gifts) received from IR35 contracts, from which it can deduct:
 - 5% for the expense of running the PSC;
 - any other prescribed, allowable expenses; and
 - any income already treated as employment income and taxed as a salary, plus associated employers' NICs.
 - the balance is known as the "deemed payment", on which the PSC must operate PAYE and employees' NICs and in respect of which it must also account for employer's NICs;
 - the "deemed payment" and associated tax and employer/employee NICs must be reported by the PSC in the usual way as part of its PAYE return (form P35) and the worker must also report their income through their SA return.
-

Supplementary written evidence from the BBC

Further to your request for additional information ahead of the Committee's discussion today, please see below the details requested and taken from our contract system on 9 July 2012 for off air roles, for the financial year 2011–12 for on air contributors and for agencies (as this is most recent data we have for these categories)

Agencies, below, refers to our contract with Reed Personnel Services for the provision of temporary staff.

(A) How many individuals earning between £50,000 and £100,000 are paid through personal services companies or agencies

There are 39 individuals in off-air roles who are paid through personal service companies.

In addition 229 individuals were paid through personal service companies under our contract with Reed Personnel Services.

There were 184 on-air contributors.

(B) How many individuals earning between £100,000 and £150,000 are paid through personal services companies or agencies

There are five individuals in off air roles who are paid through personal service companies.

In addition 63 individuals were paid through personal service companies under our contract with Reed Personnel.

There were 67 on air contributors.

(C) How many individuals earning above £150,000 are paid through personal services companies or agencies

There are three individuals earning above £150,000 and paid through a personal service company.

In addition 13 individuals were paid through personal service companies under our contract with Reed Personnel. Their roles are almost exclusively in IT projects.

There were 91 on air contributors.

(D) The nature of the work for those individuals and time spent each week working for the BBC and whether they operate as sole traders

We have provided the nature of the work in the attached table. For on air contributors all figures relate to actors, presenters and musicians. Given the nature of these contracts, in that they require work to be done rather than often setting fixed working hours and the unpredictable nature of television production, we are not able to reflect the time spent at the BBC in each working week.

(E) How many of the individuals paid through personal service companies fall under the auspices of IR35 and how many have applied IR35

All service company contracts potentially fall under IR35, and whether a deemed payment is due by the service company to HMRC under IR35 is a matter between the service company and HMRC.

The IR35 Legislation ensures that, if the relationship between the worker and the client would have been one of employment had it not been for an intermediary, the worker pays broadly tax and NIC's on a basis which is fair in relation to what an employee of the client would pay. The BBC has in place additional measures to support the visibility of these arrangements to HMRC. Statements of each contributor's earnings that year together with information as to whether or not they were contracted via a service company are supplied annually to HMRC.

(F) Whether the BBC has brought any individuals onto payroll since the initiation of the Treasury's review into similar arrangements in the central government sector

As we have already disclosed to David Winnick MP on 26 March 2012, two people have been brought onto the payroll following an internal review which we carried out of all of our service company arrangements. Both were working initially on a fixed term basis, but their work is now of a continuing nature. Neither of them were executive directors or members of a divisional board.

To allow the Committee to evaluate the appropriateness of off-payroll arrangements, would you please also include the personal contracts for those individuals earning above £150,000, appropriately redacted to remove personal information.

As the BBC does not issue bespoke contracts, please find attached our template contracts used, irrespective of contract value, for on-air and off-air service company engagements. Please note the specific clause in each relating to payment of tax.

In addition, we have attached an appendix that we thought would help the Committee to understand the numbers in each category of freelance contract.

Additionally, talent pay is published in bands in accordance with the recommendations of the DCMS Select Committee, and updated figures have been published today in the BBC Annual Report. Please note that these are the figures for financial year 2011–12:

2011–12 talent spend	2010–11		2011–12		Variance £000s
	£000s	Volume	£000s	Volumes	
<£50k	102,433	50,029	97,651	49,341	-4,782
£50k to £100k	38,259	562	42,324	637	4,065
£100k to £150k	16,990	142	15,038	125	-1,952
£150k to £250k	14,958	80	14,209	76	-749
£250k to £500k	10,781	33	10,617	33	-164
£500k to £750k	4,084		6,011		1,927
£750k to £1m	3,315	19	823	16	-2,492
£1m to £5m	14,647		9,696		-4,951
Organisations*	7,098	2,505	6,685	1,763	-413
Total	212,565	53,370	203,054	51,991	9,511

* Organisations are groups of individuals contracted as one—for example external orchestras—so it is not possible to list numbers of individuals against this spend. The number of individuals in the £500,000+ categories has been aggregated in order to protect the personal information of those individuals in line with data protection best practice.

Mr Barclay has also asked for clarification of the 30 service companies mentioned in our submission as having a purchase order value of £58,200 or more, versus an FOI answer to Mr David Mowat MP in March 2012. The two are very different as Mr Mowat's request was for all Freelance Staff for the calendar year 2011, and this included self-employed freelance contracts as well as service company contracts. Mr Mowat's request also asked for the sum of all invoices paid in that year. The data provided in our submission is for the contract value for all current Service Company engagements as at 9 July 2012.

July 2012

APPENDIX

OFF-AIR

Number engaged in any one year on some form of self-employment contract (freelance, service company, self-employed)				c.12,000
Number engaged at any one time on some form of self-employment contract (freelance, service company, self-employed)				1,500–2,500
Number engaged in any one year on service company contracts				c 3,000
		<i>Service Companies</i>	<i>Reed (temporary agency staff)</i>	
	<i>ALL self employed</i>	<i>9 July (also included in all self-employed)</i>	<i>(2011–12)</i>	<i>On-air talent</i>
<i>Question</i>	<i>9 July (off air)</i>	<i>(off-air)</i>	<i>(via Service Company)</i>	<i>(2011–12)</i>
Number paid more than £58,200	56	30	n/a	297
Number earning between £50k and £100k	73	39	229	184
Number earning between £100k and £150k	10	5	63	67
Number earning more than £150k	3	3	13	91

<i>Question</i>	<i>ALL self employed 9 July</i>	<i>Service Companies 9 July</i>	<i>Reed</i>
Jobtitles paid more than £58,200	Art Director	1 Art Director	1 The BBC uses the Reed Managed
	Casting Director	1 Consultant	1 Service for temporary resourcing
	Co Executive Producer	1 Costume Designer	1 needs, the significant proportion of
	Construction Manager	1 Delivery Manager	1 which is for IT, administrative and
	Consultant	1 Director	1 project activity, which is for a time
	Delivery Manager	1 Editor	1 limited period and/or where the BBC
	Designer	1 Executive Editor	1 does not have particular skills in-
	Director Of Photography	1 Gaffer	1 house, and/or where such skills are
	Editor	1 Grip	1 not required on an ongoing basis.
	Executive Editor	1 Interim Hr Consultant	1 The nature of these engagements
	Gaffer	1 It Contractor	1 means that they do not map in any
	Grip	1 Line Producer	1 consistent way to BBC job roles, but
	Interim Hr Consultant	1 Producer/Director	1 rather are often for a defined piece of
	It Contractor	1 Project Manager	1 work, and as such any one contractor
	Production Manager	1 Senior Producer	1 being engaged can operate under any
	Project Manager	1 (Development)	1 number of titles, such as IT
	Publicist	1 Sound Recordist	1 Consultant, IT specialist, Project
	Senior Producer (Development)	1 Stand By Riggeer	2 Manager, Engineer, Project Engineer,
	Sound Recordist	1 Executive Producer	2 or Personal Assistant, Team Assistant,
	Stand By Rigger	1 Make Up Designer	2 Co-ordinator.
	Costume Designer	2 Production	3
	Executive Producer	2 Accountant	4
	Line Producer	2 Producer	30
	Make Up Designer	2 Series Producer	
	Production Accountant	2 Total	
	Producer/Director	3	
	Production Designer	3	
Director	4		
Producer	8		
Series Producer	8		
Total	56		

<i>Question</i>	<i>ALL self employed 9 July</i>	<i>Service Companies 9 July</i>	<i>Reed</i>
Jobtitles earning between £50k and £100k	Art Director	1 Art Director	1 As above
	Best Boy	1 Best Boy	1
	Construction Manager	1 Consultant	1
	Consultant	1 Costume Designer	1
	Costume Hod	1 Costume Hod	1
	Delivery Manager	1 Delivery Manager	1
	Designer	1 Director	1
	Director In Development	1 Focus Puller	1
	Director Of Photography	1 Gaffer	1
	Focus Puller	1 Grip	1
	Gaffer	1 Interim Hr Consultant	1
	Grip	1 Line Producer	1
	Interim Hr Consultant	1 Producer/Director	1
	Make Up Artist	1 Production Manager	1
	Production Manager	1 Prop Chargehand	1
	Prop Chargehand	1 Senior Producer	1
	Prop Master	1 (Development)	1
	Publicist	1 Set Decorator	1
	Senior Costume Designer	1 Software Engineer	1
	Senior Producer	1 Stand By Rigger	1
	(Development)	1 Standby Carpenter	2
	Set Decorator	1 Executive Producer	2
	Software Engineer	1 Make Up Designer	2
	Stand By Rigger	1 Production	2
	Standby Carpenter	2 Accountant	4
	Co-Executive Producer	2 Sound Recordist	7
	Costume Designer	2 Series Producer	39
	Executive Producer	2 Producer	
	Line Producer	Total	
	Make Up Designer	3	
	Production Accountant	3	
	Production Designer	3	
	Sound Recordist	4	
Producer/Director	5		
Director	10		
Series Producer	11		
Producer	73		
Total			
Jobtitles earning between £100k and £150k	Casting Director	1 Editor	1 As above
	Director	1 Executive Editor	1
	Editor	1 Executive Producer	1
	Executive Editor	1 Series Producer	2
	Executive Producer	Total	5
	Producer	1	
	Producer/Director	11	
	Production Manager	1	
Series Producer	2		
Total	10		
Jobtitles earning more than £150k	It Contractor	1 It Contractor	1 As above
	Producer	1 Producer	1
	Project Manager	1 Project Manager	1
	Total	3 Total	3

Written evidence from Department for Business, Innovation and Skills

I am writing in response to Questions 169 and 170 below raised at the Public Accounts Committee hearing on the 16 July 2012.

Q169 Stephen Barclay: Can I just check, given the myriad arrangements you are saying are in place, have you paid or have any of those individual Agencies paid for tax advice vis-à-vis those arrangements?

Q170 Stephen Barclay: Could we have a note within a week to answer that please?

We have conducted an internal review in core BIS and also asked over 30 of our partner organisations to review their records and provide information as to whether they have sought tax advice on off payroll arrangements in the past three years. I can now confirm that the Student Loans Company (SLC) is the only partner organisation where external tax advice has been sought. They received three separate pieces of tax advice in relation to how SLC should deal with tax and NICs issues:

1. The first was in connection with the Ed Lester appointment as interim CEO via a contract with Penna with effect from May 2010. This advice also covered three others; interim director of marketing and communications, interim chief operating officer and interim director of HR. Of these, one left after three months and the others have accepted permanent roles and have moved onto the payroll (Invoice for £5,000 plus VAT, dated 25 August 2010).
2. The second piece of advice concerned Ed Lester's move from interim to permanent CEO via a contract with Penna with effect from February 2011 (Invoice for £1,550 plus VAT, dated 19 July 2011).
3. The third was in connection with when Ed Lester's services changed from the Penna contract to a direct employment contract with effect from February 2012 (Invoice for £4,700 plus VAT, dated 16 May 2012).

I thought it would be useful to explain why the first piece of tax advice concerning Ed Lester's appointment changed between June and July 2010. Initial advice was provided to the SLC on the appropriate treatment of PAYE & NICs for the engagement, before the contractual arrangements required by the Agency had been clarified. This advice did not reflect that Penna would invoice for all services and fees under a formal agency contract.

Following confirmation of the final contractual arrangements existing between the SLC and Penna, further updated advice was provided. This confirmed that SLC would not be required to operate PAYE and NICs on the fees paid to Penna for Ed Lester's services, as long as SLC confirmed to HMRC that his personal service company will be operating PAYE & NICs on the income relating to the engagement with SLC.

The tax advice was interpreted to mean that there was no loss to the Exchequer if IR35 was correctly applied. In line with the new guidance from HMT, Ed Lester has provided assurance to the Department that his personal service company accounts reflect tax and NICs on the whole of his income received for his work at the SLC in line with IR35. From February 2012, he moved on to payroll and the SLC accounts for tax & NICs at source for the remainder of his contract.

Howard Orme
Director General Finance & Commercial Group

24 July 2012

Written evidence from HMRC

At the hearing earlier this week I offered to write with more information about our compliance approach to IR35 and the number of BBC contracts with personal service companies (PSCs) that we have looked at in detail.

I can reassure the committee that, in the same way we approach our other compliance work, we also risk assess employer compliance and PSC arrangements, including for compliance with the IR35 legislation where appropriate. As I mentioned when we met, I must stress that working through a PSC does not mean that a worker is necessarily avoiding tax. Many are legitimate commercial arrangements and in many cases individuals working through PSCs may withdraw all their income as salary under PAYE, or operate the IR35 legislation when it applies to them.

The way the IR35 legislation is constructed means it is the responsibility of the PSC, rather than the end client, to consider if any of their contracts would constitute an employment relationship had the PSC not existed and the worker been engaged directly with the end client.

Because of that, in this particular area of our work, our risk assessment processes and the data we collect is not necessarily about who the PSC is engaged by but can, for example, be based on our understanding of risk in any particular sector. Many PSCs will, in any case, have had more than one end client during the period we might consider as part of an IR35 review.

We are not able to specifically report to you on the BBC as this would be a breach of taxpayer confidentiality. However, a number of the 59 IR35 cases we opened in 2011–12 were into PSCs engaged within the media sector. This is in part because the use of PSCs is particularly common in this sector. We are in the process of making further risk assessments across a number of sectors, including the media sector, as part of our planned refreshed approach to IR35 which is detailed below.

When IR35 was originally introduced by Parliament in April 2000, we took up increasing numbers of cases, peaking at over 1,000 cases in 2002–03. In later years, as we moved to a risk based approach for selecting cases, the number of cases we have taken up has varied each year, but we are now in the process of increasing resource and the number of cases we enquire into for IR35 purposes.

The Office of Tax Simplification reviewed IR35 prior to Budget 2011 and their report put forward three possible options:

- suspend IR35 with the intention of abolition;
- keep IR35 unchanged but improve the administration of it; or
- introduce a possible “business entity” test.

At Budget 2011 the Chancellor announced that IR35 would remain unchanged but that HMRC would improve its administration.

Since then HMRC has set up and regularly met the IR35 Forum, which brings together a number of representative bodies and IR35 experts. As a consequence of that work, as well as feedback from other external stakeholders, we have critically reviewed our IR35 activity and worked with the IR35 Forum to improve the way in which we administer IR35.

From April 2012 we have been piloting a number of changes and we will continue to refine and improve our administration of IR35 using feedback from external stakeholders to help with this process. The improvements we introduced from April include:

- changing our risk and compliance approach to focus on the entity and whether the PSC is being run as a “business entity” rather than being used to disguise an employment relationship;
- providing guidance to businesses so that they are able to self assess their risk of an HMRC enquiry for IR35 reasons. These are in the form of a series of questions which, dependent on the results, allocate points to the business and put them into high, medium or low risk categories of an HMRC investigation;
- providing additional guidance on when and how IR35 applies, including the factors that a business would need to consider. This has been done by creating six scenarios detailing different engagement practices and the reasons they are within or outside of IR35. This guidance and the “business entity” test are published on our website at www.hmrc.gov.uk/ir35/guidance.pdf;
- refining and refreshing our risk profiling for IR35 to better focus on those who are using a personal service company to disguise an employment relationship;
- strengthening specialist teams, bringing all the IR35 work into 3 locations to ensure that there is a consistency of approach and that cases are worked with input from our status experts;
- changing the way in which we approach an enquiry so that we are able to ascertain upfront why the personal service company considers that the IR35 legislation does not apply to them. This should help us to understand the risk faster and enable faster decisions;
- providing updated guidance and additional training to compliance staff deployed in this complex area to ensure that they have all the tools available to be able to make judgments; and
- providing a contract review service to provide contractors with complete certainty if they are within or outside of the IR35 legislation. This service is completely independent of our compliance activity. At the end of each review we will offer a detailed opinion on whether IR35 applies including the reasons for the decision. This supports our approach to helping our customers to get it right upfront.

I hope that you find this information of interest and I am very happy to talk to the Committee in further detail about any of the aspects of this letter.

Lin Homer
Chief Executive and Permanent Secretary

19 July 2012

Written evidence from Home Office

At its meeting on 16 July, the Committee sought information about the Equality and Human Rights Commission (EHRC), whether it is covered by central Cabinet Office guidance on employment of interims, and the suggestion that it had not followed this guidance in respect of a number of new appointments.

First of all I can confirm that the EHRC, as body in receipt of public funds, follows the requirements of *Managing Public Money*, and accordingly the EHRC's Chief Executive is its Accounting Officer (AO) following appointment by the Home Office's Principal Accounting Officer, Dame Helen Ghosh.

The EHRC is subject to the usual rules applying to other non-departmental public bodies for which the Home Office is responsible. These are detailed in a Framework Document which sets out the governance framework within which the EHRC operates. This document follows the model template set out in Annex 7.4 of *Managing Public Money*, and is published on both the EHRC's and Home Office's websites:

(<http://www.homeoffice.gov.uk/publications/equalities/government-equality/ehrc-framework-doc?view=Binary>)

The processes governing the appointment and renewal of contractors and interim staff at the EHRC set out in the Framework Document are fully in line with Cabinet Office guidance. All new contracts and renewals of existing contracts require the approval of the Home Office's Consultancy and Contingent Labour (CCL) Board, to ensure rigorous scrutiny of whether they will deliver value for money.

In March 2012, the CCL Board was asked to approve the extension of 14 existing contracts and one new contract at the EHRC. These posts fell into two categories—first, posts which were deemed “business critical”—needed to ensure business continuity over a specific period while the EHRC sought to appoint permanent replacements, and second, posts which were needed to deliver the EHRC's change programme, which will deliver the significant savings necessary following the Government's decision to reduce the EHRC's budget by over half. Of these, 13 contract extensions and one new contract were approved, in full compliance with Home Office and Cabinet Office guidance. Approval for one post was deferred. Two further posts—one business critical and one required for the change programme—were approved by the CCL Board on 1 May 2012. No other requests were made by the EHRC between January and mid-May 2012. The allegation that the EHRC had “run through” 17 or 18 new appointments without due process is therefore not correct.

We continue to work with the EHRC to reduce its reliance on interim appointments. In the last 12 months, the number of interims employed by the EHRC has fallen from 35 to 17, and set to fall to fewer than five by the end of the financial year.

I trust that this letter provides the assurance that the Committee was seeking.

Jonathan Rees
Director General

23 July 2012

Supplementary written evidence from the BBC

As requested by the Committee during its oral evidence session into the taxation arrangements of public sector employees on 16 July 2012, I am writing with additional information on the BBC's use of service companies. Below is the information requested by the Committee in answer to **Q53**, regarding the lengths of the service company contracts referred to in our previous submission:

OFF-AIR SERVICE COMPANY CONTRACTS WITH PURCHASE ORDER VALUES OF OVER £58,200 AS OF 9TH JULY 2012

<i>Job Title</i>	<i>Length (Days)</i>	<i>Length (Months)</i>
ART DIRECTOR	184.00	6.13
CONSULTANT	22.00	0.73
COSTUME DESIGNER	236.00	7.87
DELIVERY MANAGER	139.00	4.63
DIRECTOR	118.00	3.93
EDITOR	251.00	8.37
EXECUTIVE EDITOR	254.00	8.47
EXECUTIVE PRODUCER	201.00	6.70
EXECUTIVE PRODUCER	250.00	8.33
GAFFER	164.00	5.47
GRIP	209.00	6.97
INTERIM HR CONSULTANT	88.00	2.93
IT CONTRACTOR	53.00	1.77
LINE PRODUCER	184.00	6.13
MAKE UP DESIGNER	236.00	7.87

<i>Job Title</i>	<i>Length (Days)</i>	<i>Length (Months)</i>
MAKE UP DESIGNER	230.00	7.67
PRODUCER	166.00	5.53
PRODUCER	210.00	7.00
PRODUCER	801.00	26.70
PRODUCER/DIRECTOR	266.00	8.87
PRODUCTION ACCOUNTANT	178.00	5.93
PRODUCTION ACCOUNTANT	233.00	7.77
PROJECT MANAGER	470.00	15.67
SENIOR PRODUCER	25.00	0.83
SERIES PRODUCER	85.00	2.83
SERIES PRODUCER	195.00	6.50
SERIES PRODUCER	399.00	13.30
SERIES PRODUCER	200.00	6.67
SOUND RECORDIST	198.00	6.60
STAND BY RIGGER	174.00	5.80

OFF-AIR SERVICE COMPANY CONTRACTS WITH PURCHASE ORDER VALUES OF OVER £50,000
AS OF 9TH JULY 2012 AND NOT ALREADY MENTIONED ABOVE

<i>Job Title</i>	<i>Length (Days)</i>	<i>Length (Month)</i>
PROP CHARGEHAND	207.00	6.90
BEST BOY	137.00	4.57
PRODUCER	148.00	4.93
FOCUS PULLER	192.00	6.40
SERIES PRODUCER	129.00	4.30
SOFTWARE ENGINEER	69.00	2.30
COSTUME HOD	231.00	7.70
STANDBY CARPENTER	196.00	6.53
PRODUCER	166.00	5.53
SET DECORATOR	184.00	6.13
EXECUTIVE PRODUCER	164.00	5.47
SOUND RECORDIST	124.00	4.13
SERIES PRODUCER	186.00	6.20
PRODUCER	152.00	5.07
PRODUCER	67.00	2.23
PRODUCTION MANAGER	174.00	5.80

The longest off-air service company contract is 801 days in duration. This is a contract for seasonal activity and the individual is only paid for the time worked within that period. In answer to **Q64** from the Committee, the longest continuous contract with an individual via a service company is for a term of seven years. Most contracts are for one year. In many cases the contract term will be determined by the length of the rights that the BBC has obtained or the number of series that a BBC channel has commissioned.

As we said to the Committee, the BBC is conducting a review of our tax arrangements (**Q106**). This review is due to report in October, and as we stated in the oral evidence session, we will of course be happy to share its conclusions with the Committee.

I would like to take this opportunity to update the Committee with the latest data of on-air talent employed via service companies. These figures are for the 12 months to 22 June 2012:

<i>Total over £58,200</i>	<i>Between £50k–£100k</i>	<i>Between £100k–£150k</i>	<i>Over £150k</i>	<i>Total over £50k</i>
335	196	80	104	380

Finally, I would also like to draw the Committees attention to the fact that publication of misleading reports of some aspects of our taxation arrangements, which they may have read, has resulted in an apology and retraction from the *Daily Mail*.

Andrew Scadding
Head of Corporate Affairs

8 August 2012

Written evidence from the Local Government Association

Thank you for your letter of 26 July. I have been on holiday so my apologies for the delay in responding.

I am sorry if you have any concern that I might have unwittingly misled the Committee in the evidence I gave on 16 July. That was certainly not my intention and I took great care to ensure I shared all of the information available to me and withheld nothing.

When your clerk contacted my office requesting my attendance I spoke to him to relay my concern that the subject matter was not one on which the LGA held information and that in the very short space of time available I would struggle to provide information or make a meaningful contribution to the Committee. I also expressed that this information had already been sought through FOI requests of councils and that little publicity had arisen as a result.

Given the continued request for me to attend, in good faith, and with little time, the LGA sought to establish whether any significant patterns of councils currently employing people on personal service contracts against permanent positions, in line with the HMT investigation and report, existed. We circulated the HMT report to regional bodies so they were clear of the context.

The number of 13 that I quoted was an extrapolation from the results reported by seven of the nine regional employer bodies. As I said in my evidence, even if that figure underestimates the total by a large margin, it is still likely to be small both in relation to the 19,950 employees in local government paid over £50,000 and even more so by reference to the 1.6 million local government employees.

When the controversy arose earlier this year the LGA/ALACE Joint Negotiating Committee sent out the following guidance to councils:

“As a result of the recent controversy elsewhere in the public sector, the Government has moved swiftly to add to the statutory guidance a call for local authorities to include in the pay policy statement a local policy on using payment arrangements that could be perceived as seeking to minimise tax payments.”

This is short-hand for arrangements under which people who are to all intents and purposes employees and are paid through a personal service company, in order to reduce their personal tax and National Insurance liabilities. The statutory guidance calls on local authorities to consider the value for money implications for the public sector as a whole of using such arrangements when developing their pay policies.

I would imagine that councils took heed of this guidance and made changes which for some regional areas may well have resulted in a very low figure being returned in relation to the current practices within councils.

The reasons Barnet Council's use of interim appointments were explained in my letter of 20 July. The council assures me that they have been entirely transparent about this. In its 2011–12 accounts as presented for audit, which can be found on the council's website, a disclosure of officers' remuneration is presented on pages 73–76. This can be found at the following link: <http://barnet.moderngov.co.uk/documents/s4427/Appendix%20A%20-%20Un-audited%20copy%20of%20Statement%20of%20Accounts.pdf>. This disclosure, which appears to me to be comprehensive, clear and straightforward, demonstrates both the extent to which the council is reducing the size and cost of its senior workforce and the posts that are currently filled on an interim basis.

Obviously councils are not accountable to me for the conduct of their activities but to their own electorates and the information I attach from Barnet is available to their electorate.

Once again I apologise if you feel that I unwittingly misled the committee. I have re-read the transcript of my evidence and I do feel that the limitations of my contribution were explored by you and acknowledged by me.

I hope that you and member of the committee will find the further information I have given helpful.

Carolyn Downs
Chief Executive

29 August 2012

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