

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL INSURANCE CONTRIBUTIONS (TERMINATION AWARDS AND SPORTING TESTIMONIALS) BILL

First Sitting

Tuesday 14 May 2019

(Morning)

CONTENTS

Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
Motion to sit in private agreed to.
Examination of witnesses.
Adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 18 May 2019

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The Committee consisted of the following Members:

Chairs: SIR HENRY BELLINGHAM, † SIR ROGER GALE, † SIOBHAIN McDONAGH

† Blackman, Kirsty (<i>Aberdeen North</i>) (SNP)	† Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/ Co-op)
† Cartlidge, James (<i>South Suffolk</i>) (Con)	† Scully, Paul (<i>Sutton and Cheam</i>) (Con)
† Dodds, Anneliese (<i>Oxford East</i>) (Lab/Co-op)	† Smith, Jeff (<i>Manchester, Withington</i>) (Lab)
† Dowd, Peter (<i>Bootle</i>) (Lab)	† Smith, Laura (<i>Crewe and Nantwich</i>) (Lab)
† Grant, Bill (<i>Ayr, Carrick and Cumnock</i>) (Con)	† Tomlinson, Michael (<i>Mid Dorset and North Poole</i>) (Con)
† Hughes, Eddie (<i>Walsall North</i>) (Con)	† Walker, Thelma (<i>Colne Valley</i>) (Lab)
† Jenrick, Robert (<i>Exchequer Secretary to the Treasury</i>)	† Wood, Mike (<i>Dudley South</i>) (Con)
† Knight, Julian (<i>Solihull</i>) (Con)	Mike Everett, <i>Committee Clerk</i>
† Milling, Amanda (<i>Cannock Chase</i>) (Con)	
† Morris, Grahame (<i>Easington</i>) (Lab)	† attended the Committee

Witnesses

Robert Jenrick MP, Exchequer Secretary, HM Treasury

Simon Smith, Senior Policy Adviser, HM Treasury

Raj Nayyar OBE, Bill Manager and National Insurance Contributions Policy Adviser, Her Majesty's Revenue and Customs

Bill Dodwell, Tax Director, Office of Tax Simplification

Colin Ben-Nathan, Chair, Employment Taxes Sub-committee, Chartered Institute of Taxation

Public Bill Committee

Tuesday 14 May 2019

(Morning)

[SIR ROGER GALE *in the Chair*]

National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill

9.25 am

The Chair: Good morning, ladies and gentlemen. You will have noticed that I am not your Chairman, but I am for the moment; I hope the Chairman will arrive in due course. In the meantime, I have a couple of announcements before we start: please turn off your mobile phones and anything else electronic that makes a noise, and please remember that tea and coffee are not allowed in the room during sittings.

We will consider first the programme motion on the amendment paper, then the motion to enable the reporting of written evidence for publication, and then the motion to allow us to deliberate in private about our questions before the oral evidence session. In view of the time available, I hope we can take those matters formally, without debate. I call the Minister to move the programme motion in his name, which I gather was discussed yesterday by the Programming Sub-Committee.

Ordered,

That—

- (1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 14 May) meet—
 - (a) at 2.00 pm on Tuesday 14 May;
 - (b) at 11.30 am and 2.00 pm on Thursday 16 May;
- (2) the Committee shall hear oral evidence in accordance with the following Table:

TABLE

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Tuesday 14 May	Until no later than 10.25 am	HM Treasury
Tuesday 14 May	Until no later than 11.25 am	Office of Tax Simplification; Chartered Institute of Taxation

- (3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 16 May.—(*Robert Jenrick.*)

The Chair: That means that all the deadlines for amendments to be considered during line-by-line scrutiny have now passed.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Robert Jenrick.*)

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(*Robert Jenrick.*)

9.27 am

The Committee deliberated in private.

Examination of Witnesses

Robert Jenrick MP, Simon Smith and Raj Nayyar OBE gave evidence.

9.28 am

The Chair: Good morning to those who have just joined us. We now resume our public sitting and hear evidence from the Treasury. Before I call the first Member, I remind all Members and witnesses that questions and answers should be limited to matters within the scope of the Bill. Please also recognise that we must stick to the timings in the programme order that the Committee has agreed.

The scope of the Bill is quite narrow. Essentially, the Bill introduces a new class 1A national insurance contribution on termination awards in excess of £30,000, and a new class 1A national insurance contribution on sporting testimonial payments over £100,000. Could Members and witnesses try to keep their comments focused on the scope of the Bill, which is not about general reform of national insurance?

Do any members of the Committee wish to declare any interests before we proceed?

Mike Wood (Dudley South) (Con): I declare an interest as vice-chair of the all-party parliamentary group on football.

The Chair: Thank you. The understudy will now hand over to the Chairman.

[SIOBHAIN McDONAGH *in the Chair*]

The Chair: I apologise to all members of the Committee for being late. Things have conspired against me!

I call the first panel. I remind the Committee that we have until 10.25 am for this session. Will the witnesses please introduce themselves?

Robert Jenrick: Good morning. It is a pleasure to serve under your chairmanship. I am Robert Jenrick, Exchequer Secretary to the Treasury.

Simon Smith: I am Simon Smith, head of national insurance contributions policy at the Treasury.

Raj Nayyar: I am Raj Nayyar, Bill manager for Her Majesty's Revenue and Customs, and national insurance contributions policy adviser.

The Chair: Thank you. I call Peter Dowd.

Q1 Peter Dowd (Bootle) (Lab): Thank you. It is a pleasure to see you in the Chair, Ms McDonagh.

Minister, on publishing its report of 14 November 2016, the then chair of the Office of Tax Simplification, Angela Knight, said:

“Our independent review has demonstrated...that some will gain and others will lose from any change.”

Could you tell us who gains and who loses as a result of these proposals?

Robert Jenrick: Are you speaking in relation to termination payments?

Peter Dowd: Yes, termination payments.

Robert Jenrick: First, the most important point to make is that we have chosen only to apply national insurance contributions class 1A to employers' national insurance contributions, not to employees, although I appreciate the argument that could be put forward that that will impact on the total settlement made to employees when an employer looks at the package they are to receive on termination. The evidence we have seen suggests that it will have a very limited impact on wages, which was a point that you raised on Second Reading, Mr Dowd—around 0.01% impact.

In terms of who will bear the cost, the vast majority of termination payments will be exempt. Around 80% of individuals receiving a termination payment will not be affected by the measure. There is already a generous threshold of £30,000, which compares very favourably internationally. There is no income tax payable before that point, and even with this measure, there will be no employers' national insurance payable—it will only be on payments above that. Because of that, we anticipate that the proposals will affect higher income groups.

The best estimate that Her Majesty's Revenue and Customs and the Treasury have made is that it will impact the top two or three income deciles. It will have a very limited impact on low or middle-income earners.

Q2 Peter Dowd: Can you confirm that no distributional analysis has been undertaken of the impact of the new class 1A charge for employers on termination awards? Is that correct?

Simon Smith: We wrote to the Committee about distributional analysis prior to the session. We said in that note that what we have done, and are able to do with the data we have, is to show that this would disproportionately affect higher and additional rate taxpayers. But due to data limitations, we cannot do the formal distributional analysis of the type that we would usually do with a full Budget policy costing. However, we are confident that it would affect the top two to three income deciles, as the Minister says.

Q3 Peter Dowd: I acknowledge your point, but the answer to the question is no; you have not done a distributional analysis, and you say you cannot do one because it is not pertinent or possible to do one.

Simon Smith: Yes, it is not possible.

Q4 Peter Dowd: Okay. May I go on to the issue of collection? The legislation does not set out the way in which the class 1A charge will be collected, stating that that will be covered by secondary legislation. Minister, do you accept the criticism from tax accountants that that is a break from practice and that it will be confusing for employers, as well as, for example, adding to administrative burdens?

Robert Jenrick: No, we do not agree with that. I will let my colleague Raj, who perhaps has the greatest expertise from an HMRC perspective, speak to this in a moment, but the purpose of the policy is tax simplification and greater alignment with income tax. Our primary motivation is to simplify the tax code and to give greater certainty to taxpayers. We chose class 1A as the most logical class of national insurance on which to apply the charge, because it is the class that applies to benefits received by employees, and is paid by employers.

I know that, on Second Reading, you raised the question of whether we could have chosen an alternative class, or created a new class altogether. We chose not to create a new class altogether because that would have gone against the grain of what we were trying to do. Far from simplifying national insurance in a modest way, that would have made it more complicated. Class 1 national insurance contributions are somewhat different, because that is both employers and employees.

As I said in answer to your first question, we specifically chose to apply only employers' national insurance in this situation, not employees' as well, which, of course, we could have done. That would have simply been an additional charge that individuals had to pay. We chose not to do that. We gave it considerable thought and came to the conclusion that class 1A was the most logical one to apply this through. I think that has been widely recognised. I do not know whether Raj has anything to add.

Raj Nayyar: The only thing I would add is that when there is a cash payment—a termination award—for income tax, it is currently collected through pay-as-you-earn. It is reported in real time and paid either monthly or quarterly, depending on the size of the employer. For a class 1A contribution, where it is a cash award, it will be reported and paid in the same way as pay-as-you-earn income tax.

Robert Jenrick: The point there, just to emphasise it, is that the motivation is greater alignment with income tax. By bringing the two into the same manner of payment, we are simplifying, rather than adding further complexity. Had we created a misalignment, where one—income tax—was paid through PAYE and the other was paid separately, perhaps at the end of the tax year, we would not have served the purpose of the Bill.

Q5 Peter Dowd: I understand that class 1A charges will arise and be paid in real time, rather than after the tax year-end, as is the case with other class 1 charges. Given that we are talking about simplification, do you not accept that payment in real time would require additional boxes on the PAYE real-time information submission, and a new process by Her Majesty's Revenue and Customs for monthly or weekly PAYE reductions for employers? Would that not place an administrative burden on employers that is not factored into the policy note produced by Treasury officials? It does not appear to be as simple as you are suggesting, in the round.

Raj Nayyar: May I answer that for the Minister? The main point is that employers are already doing that for income tax. They already have to report and pay in near-real time, so it will not add much to what they already have to do for income tax.

Just to clarify one point, there will be instances when they will pay the class 1A termination award after the year-end, and that is when the termination award comprises a benefit in kind. For example, if an employee is allowed to keep a car for a specific period, that is a benefit in kind, and that will continue to be reported after the end of the year.

Q6 Kirsty Blackman (Aberdeen North) (SNP): To follow up on that, can you confirm that this is the only class 1A liability that will arise on cash earnings?

Robert Jenrick: Yes.

Raj Nayyar: Yes.

Q7 Kirsty Blackman: So there are currently no others for cash apart from those in the Bill for sporting testimonials and termination awards?

Robert Jenrick: Yes.

Raj Nayyar: Yes.

Simon Smith: Yes.

Q8 Kirsty Blackman: On the real-time collection mechanism, can you confirm that this is the only class 1A liability that will arise in real time?

Robert Jenrick: Yes.

Raj Nayyar: Yes.

Simon Smith: Yes.

Q9 Kirsty Blackman: It seems to me that you are creating a different class within a class with these 1A contributions. They are still going to be termed 1A contributions, but they will be treated totally differently and arise on different classes of stuff from current 1A contributions.

Robert Jenrick: It is distinct from the others, but, as I said earlier, if the choice was about which of the classes is the most logical to apply this to, this would remain the most logical. If your argument is that because this is somewhat different, you could have created an additional class of NICs, you could have done that, but we took the view that that would have added more complexity than simply having a somewhat different situation within class 1A.

Raj Nayyar: Can I add to what the Minister said? We are working to minimise any additional administrative burden there may be, but, as I said, because this is already being done by employers for income tax, any additional burden would be minimal. HMRC will make sure that guidance for employers is ready in good time, and it will also be talking to and consulting software providers about how to bring this about.

Q10 Kirsty Blackman: Currently, there may be employers out there who do not do anything on class 1A, because they do not provide any benefits in kind to employees. They will not change anything they do, but may now be liable for class 1A contributions done in this different, unusual class 1A way, just because you are bringing cash termination payments into class 1A contributions. Is that right?

Robert Jenrick: That is technically possible, yes.

Q11 Kirsty Blackman: Okay. So it could be an additional administrative burden on those who do not currently pay any benefits in kind.

Raj Nayyar: We think that there would be a one-off understanding and learning.

Q12 Kirsty Blackman: On the impact on the amount that employees receive, your work tells us that mostly people in the top two or three income deciles will be affected—or disproportionately impacted, as you suggest. Have you quantified the total amount that employees will lose as a result?

Robert Jenrick: I will ask Simon to answer in a moment, but it is not as simple as that, because that is being paid for by employers. As I said earlier, we have

chosen not to apply both employer and employee national insurance contributions, so the employee will not pay anything directly. Your question cuts to, “If you were an employer looking at how much money you were willing to pay somebody as part of a termination, would you take into account the fact that the employer now has to pay 13.8% class 1A national insurance contributions?”

That is quite possible—we do not dispute that—but it is difficult to accurately quantify the proportion of employers that would pass that on to the employee. We know that it is a revenue-raising measure, and we expect—and the Office for Budget Responsibility has verified—that it will bring in around £200 million a year on an ongoing basis. Those facts speak for themselves. We will be raising additional national insurance revenue from employers, but it will be for employers to decide how much of that is passed to employees through the usual negotiations.

Simon Smith: The only thing that I would add is that the OBR has chosen to model this as a 0.1% reduction in wages. There has been no further adjustment on top of that for redundancy payments or anything else. That is largely because it is uncertain, as the Minister said, how it would be distributed. It will depend a lot on the individual employer-employee relations whether it is taken as lower profit, wages or anything else.

Q13 Kirsty Blackman: Does the Treasury have details about the number of business start-ups by people who have received termination payments?

Simon Smith: We do not have specific data on that.

Q14 Kirsty Blackman: If the Committee meets on Thursday, it would be useful if you could look and see if you have data on the number of business start-ups as a result of termination payments, because I am concerned about the impact there may be on business start-ups as a result of the reduction in termination payments received by employees. Do you see what I mean?

Robert Jenrick: I certainly do not hold those figures. I have seen independent anecdotal surveys, but I do not know on what basis they have been drawn up. Clearly, as you allude to, a large number of small businesses are begun by people who have lost their job and have taken that as an opportunity to set up their own business.

To return to the facts of the Bill, we still have a very generous threshold of £30,000. However wealthy one is, losing a job is a very difficult time in life. It is not an experience that people want to go through, whatever income level they have, but that does compare favourably by international standards. A number of countries, such as the United States and Germany, have no threshold at all, so people would start to pay income tax and employment taxes from £1. Even with this change, our system will compare favourably with other countries that we would look to as competitors or countries that we think have sensible welfare safety nets.

Kirsty Blackman: My other questions are on sporting testimonials. Chair, do you want me to hold them or ask them now?

The Chair: Do you mind if I bring in a few more people? Thank you.

Q15 Michael Tomlinson (Mid Dorset and North Poole) (Con): Minister, can I pick up on the point about the threshold and international comparisons? You gave two examples, but you said in broad terms that we compare favourably. Can you expand on that a little bit and give the Committee more evidence?

Robert Jenrick: Of course. It was raised on Second Reading that, as a country, our threshold has been frozen since the late 1980s. That raised the perfectly legitimate question: is this a sensible place at which to retain the threshold? We think it is. We did international analysis when making changes from the income tax perspective that were legislated for in the Finance Acts 2016 and 2017. As I said earlier, the threshold compares favourably with OECD countries and EU countries. A number of countries, most prominently Germany and the United States, have no threshold at all. We therefore think that the threshold is fair. It is also worth noting that there is a range of exceptions that cover important situations such as disability, to which it does not apply.

The threshold has been debated. In fact, it is not set out in this Bill at all but is set out, from an income tax perspective, in the Finance Act. It was debated at that point and, clearly, the House came to the conclusion that it was a sensible level that compared reasonably with international comparators. The Bill does not speak to that; it purely applies employer's national insurance class 1A to the amount that is taxable from an income tax perspective, using the threshold that is set elsewhere in the Finance Act. If one wanted to return to that, one would return to it through a future Finance Bill but, as I say, it was debated at the time and the view of the House was that it compared favourably by international standards and was a sensible place to remain for the time being.

Q16 Michael Tomlinson: Can I pick up on a point made by the shadow Minister, the hon. Member for Bootle, on provenance? Were there any recommendations by any key bodies or other organisations? How has it come about?

Robert Jenrick: As Mr Dowd said, the origin of the reform comes from our asking the Office for Tax Simplification to review benefits including termination payments and to see if there are sensible ways in which we could simplify the system and create greater clarity and fairness. Making a change of this kind was one of its recommendations, which we have now taken forward from an income tax perspective and in the Bill. Simon, do you want to add anything about the process?

Simon Smith: Not on the process, but may I add something on the international comparisons point? The analysis published by the OTS shows that approximately half of countries have no exemption at all for termination payments. We are also aware that there are other countries with no exemption for social security: Switzerland and Denmark, for example, have no threshold at all. That is quite a large number of countries that we would compare favourably with.

The only thing that I would add on the process is that it started with the OTS, but we have since consulted quite widely on the policy. We have spoken to more than 100 groups and individual representatives and have consulted on the draft legislation for the termination payments measure, so it has been widely considered by quite a range of groups.

Q17 Michael Tomlinson: That is very helpful. We have touched on the burden on businesses, but can you amplify further the warnings that have been given to businesses to prepare for this? How long have they had? Are you confident that businesses will be ready from day one?

Robert Jenrick: I hope so. Both measures in the Bill have been in the public domain for a very long time. They were first announced in 2015; we published these parts of the Bill in December 2015 and they have been consulted on and restated in successive Budgets. From an income tax perspective, we legislated in the 2016 and 2017 Finance Bills, which have now come into law—one of them has been in place for two years. We spoke to a range of stakeholders through the consultation and the passage of the Finance Bills. From a business perspective, in the accounting community and, with respect to the second measure, in supporting bodies, these measures are anticipated and well expected and have already been put into place from the income tax perspective.

Q18 Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve on this Committee with you in the Chair, Ms McDonagh. May I ask for clarification on one point? The Minister suggested that the impact on wages and salaries was projected to be 0.01%, but Mr Smith pointed out that the OBR estimate is 0.1%.

Robert Jenrick: I apologise—it was my mistake. Simon was correct: it is 0.1%.

Q19 Anneliese Dodds: Thank you. It may appear picky, but given how much wage stagnation we have had, 0.1% is quite significant in terms of the overall wage increases—or lack of increases—that we have had in recent years.

May I push the Minister further on our discussion about the relationship between these measures and what occurs in other countries? The UK's system for supporting those in unemployment is far less generous than in most other countries—surely we should take that into account. Will he confirm that he does not intend to use the door that the legislation leaves open to further varying down the threshold of £30,000? The Opposition argued for that door to be closed, but it has not been. Will the Minister confirm that the Government have no plans to further vary down the £30,000 threshold?

Robert Jenrick: We do not have any plans to change the threshold. You are not correct in saying that that is a matter for this Bill; if one wanted to take it forward, it would be a matter for a future Finance Bill. If one wanted to change the threshold, it would need to be done via an affirmative statutory instrument, and there would be every opportunity for the House to scrutinise it, debate it and vote on it at that point. However, we have no plans to change the threshold.

Q20 Anneliese Dodds: I am grateful to the Minister for those comments, but he has just confirmed the situation, which is that legislation that this House has passed leaves open that possibility. Varying down the level could be done through a statutory instrument, rather than requiring an Act.

Robert Jenrick: As I say, it would be an affirmative statutory instrument, so if the official Opposition took issue with it, they would have the opportunity to do so.

Q21 Anneliese Dodds: Thank you; the point is clear. I appreciate that clarification.

I have questions about testimonials, as does the SNP spokesperson, the hon. Member for Aberdeen North, but I am sure we will come back to them later. My final question for now is about the real-time approach to payment of NICs. What kind of communication exercise will be undertaken with those who may be affected? I appreciate Mr Nayyar's comments about ongoing discussions with software providers and others, but concerns have been expressed that this remains something that could be viewed as an administrative burden. The view is that, currently, the system is not set up to accept those payments. Can we have an indication of the communications that will be provided to ensure businesses are aware of this and not concerning themselves unnecessarily?

Raj Nayyar: I will take this. HMRC has regular stakeholder events with tax professionals and software providers in which we will be communicating how this will happen. We will be issuing guidance in due course to explain what we would like employers to do and what they need to be aware of. We will be supplying specifications for third-party software providers about what changes they need to make to their software, so all of that will be ongoing.

Robert Jenrick: To add to that, the purpose of bringing the Bill forward at this moment is that, if we can secure passage through Parliament and gain Royal Assent, there will be good time for that communication and for employers and software providers and so on to make the necessary changes before the start of the next tax year.

Q22 Grahame Morris (Easington) (Lab): It is a privilege to serve on the Committee under your chairmanship, Ms McDonagh. I seek some clarification from the Minister in respect of some of his earlier responses. When explaining why the Bill has been brought forward, you mentioned clarity, fairness, consistency and international comparators, but it is also an issue of closing a tax loophole, is it not? Can you clarify the particular point that was made on Second Reading that terminations were

“subject to different income tax and national insurance treatment” and that had allowed a

“small number of well-advised employers to disguise final payments as compensatory termination awards that benefit from a national insurance charge exemption.”—[*Official Report*, 30 April 2019; Vol. 659, c. 153-4.]

Do some well-informed employers see this as a means of avoiding paying tax and a way of giving a bonus to an employee on a short-term contract, thus also avoiding PAYE income tax?

Robert Jenrick: Essentially, yes. We have numerous examples of this. Raj, will you give some of them?

Raj Nayyar: Common examples we have seen are when an employee may have been due payment in lieu of notice, but they reach an agreement with their employer whereby the contract is terminated and, instead, they get a compensation award for damages for breach of that contract. That is taxable over £30,000 but it would have been entirely NICs-free. The Bill disincentivises that kind of manipulation by the very well advised.

Robert Jenrick: Choosing only to apply employer's national insurance disincentivises the employer from taking that action, without doing what one might have done by going further and creating a further cost to the employee.

Q23 Grahame Morris: Will the Minister—or perhaps his officials—indicate how many employers HMRC has investigated over the past few years who are using this loophole to avoid paying national insurance contributions, or is it simply an estimate?

Raj Nayyar: I am afraid we do not have the numbers to break that down.

Q24 Grahame Morris: Can you not make an estimate of how much the Treasury has lost? You said in your earlier answer that it would generate £200 million in revenue. I also saw an earlier note that said it would raise £485 million for the Treasury by 2020-21. Is it fair to say that £200 million is being lost per year?

Robert Jenrick: No, that is not correct.

Simon Smith: To explain the difference between those two figures, the £485 million figure includes the impact of the income tax changes that have already been passed that were part of a package of measures. There are two different sets of changes. The first set—the income tax changes—simplified the rules to make it harder to manipulate payments. The NICs bit, which we are now taking forward, aligns the NICs treatment to remove the incentive to do what we were trying to stop through income tax in the first place. The £200 million figure refers to the yield just from the NICs element of this—the bit that we are discussing today.

Q25 Grahame Morris: I am with you. Do we have an estimate of how much the Treasury has lost as a result of using this method to avoid paying NICs?

Simon Smith: We do not have a breakdown of that.

Q26 Laura Smith (Crewe and Nantwich) (Lab): It is a pleasure to serve under your chairmanship, Ms McDonagh. A quick question for the Minister: how much consultation has there been with the trade unions over this?

Robert Jenrick: We consulted twice and the trade unions took part in the consultations.

Simon Smith: The Trades Union Congress definitely responded. I have a full list of responses, and would have to look at who else responded. The Trades Union Congress definitely sent a response.

Robert Jenrick: We will confirm which other trade unions responded to the consultation. From memory, the Trades Union Congress certainly did.

Q27 Laura Smith: So we can get some of that information from you. Brilliant, thank you.

Simon Smith: Yes. I think it is publicly available. There is a full list of the respondents to the consultation on termination payments at the back of the consultation document.

Q28 Thelma Walker (Colne Valley) (Lab): It is a pleasure to serve with you in the Chair, Ms McDonagh. There is concern among trade unions that this means

downward pressure on the amount received by people losing their jobs, who are, by definition, in a time of need. What are your comments on that?

Robert Jenrick: I tried to answer that earlier. We all understand that, regardless of income, losing your job is a very difficult period in your life. People of all income levels can live to their income and have commitments and so on. I do not for one moment underestimate the difficulty that that situation presents to individuals and their families. However, this measure is targeted at higher earners. We have the £30,000 threshold, which takes out the majority of termination payments. Around 20% of those individuals receiving a termination payment will be affected by this, so 80% will not be affected.

Those who are affected will be individuals in the higher income brackets, as we said earlier—those in the top two or three income deciles. They will be higher rate or additional rate taxpayers. I do not diminish the fact that for higher rate taxpayers, losing your job is a very difficult period in your life which puts all manner of pressures on you and your family. It is worth noting, at least, that this is a measure that is unlikely to impact those on lower incomes.

Q29 Thelma Walker: And there are conversations to be had with the trade unions about this.

Robert Jenrick: As I said, we have consulted on this and I believe that they took part. They have had an opportunity to have their views known and listened to by the Treasury, as have business groups.

Q30 Kirsty Blackman: Moving on to sporting testimonials, I am not somebody who goes to a huge number of live sports matches of any kind. How much do people generally pay for a ticket to a sporting testimonial?

Robert Jenrick: There is no easy answer. There is immense variation in events; they vary from a sporting testimonial at Wembley stadium for a premiership footballer to ones at my local football club in Newark for a player who has retired after a 10-year career. You see a complete range of prices for sporting events. We have evidence on the amount raised by the average sporting testimonial that is affected by the Bill from a piece of work that HMRC and the Treasury did in 2013. I believe it was £72,000. Obviously, many much smaller testimonials go below that, such as the one I have just described in the small club in my constituency. Finding the evidence on more substantial testimonials is not easy, because there is no central point of collection for it, but after doing a trawl for evidence in the public domain, we came to the conclusion that the amount is about £72,000 a year. As you will probably have seen, there is a threshold in the Bill of £100,000, so the vast majority of sporting testimonials will not be caught by this measure.

Q31 Kirsty Blackman: Are the ticket prices for the ones that are over £100,000, because they are likely to be caught, normally fixed, or are they done on a donation basis?

Simon Smith: Again, there would be a lot of variation. The other point I would make is that not all sporting testimonials will be affected by this Bill. We are talking about only non-contractual, non-customary sporting testimonials. Contractual and customary sporting

testimonials are already fully taxable and NIC-able. Indeed, the income tax treatment of the non-contractual, non-customary sporting testimonials has already been legislated for, and it is in operation.

Q32 Kirsty Blackman: I have a question about the consistency of the language in parts 1 and 2. Part 1 defines the amount received in relation to the income of the earner under section 403 of the Income Tax (Earnings and Pensions) Act 2003, whereas the sporting testimonial section, instead of defining it on the basis of an ITEPA category—I think section 226E is the key one for sporting testimonials—talks about about general income. It does not define it in terms of the ITEPA eligibility threshold. Why is there a difference in language between the two parts of the Bill? When part 2 talks about general earnings, does it actually mean ITEPA section 226E?

Raj Nayyar: I think it does, but it might be helpful if we wrote and explained the difference.

Q33 Kirsty Blackman: Is it intentional that there is a difference?

Raj Nayyar: Yes, it was, but I think it would be best if we wrote to you.

Q34 Kirsty Blackman: This is the last question from me. I have tabled an amendment about the Exchequer providing a report on the impact three years after the Bill comes into force so that we are aware of whether it has raised the £200 million a year that the Treasury suggested it would. I do not have a huge amount of success in getting amendments accepted, so I wonder whether the Minister and his team would provide that report, even if they do not accept my amendment?

Robert Jenrick: Sorry to disappoint you.

Kirsty Blackman: It was worth a try.

Robert Jenrick: I did actually accept one of your amendments to the Finance Bill, so it sometimes works.

Kirsty Blackman: You did; it is true. It does not happen often, though.

Robert Jenrick: The established process is that we review pieces of new legislation within three to five years. As this is a Treasury Bill, we will write to the Treasury Committee within three to five years, setting out our intention to review the Bill and the outcome of our work.

Raj Nayyar: If we have not already done so. Sometimes HMRC will already have commissioned research on how a policy has worked out, and we can then just explain that that has happened and the impact of it.

Robert Jenrick: The £200 million is for termination payments. As for sporting testimonials, we believe that this measure will raise a very small amount of money. Our motivation is to ensure clarity by placing the tax situation on the statute book, and to ensure fairness between sportspeople who have testimonials, rather than to raise significant sums of money. The OBR has certified that the effect is negligible, which means less than £3 million, but it could be significantly less than £3 million.

Q35 Mike Wood: A lot of sporting testimonials at all levels are used to raise money for charities and good causes, with either all or some of the proceeds going to

[Mike Wood]

local or national charities. How do you expect these measures to impact on charitable giving through sporting testimonials?

Robert Jenrick: That is a good question. We do not think it will have a material impact. If you are a sportsperson who wants to give all or part of your testimonial receipts to charity, there are two options available to you. First, you could use our very generous system of payroll giving, which is without limit. Your employer, which in this case may well be the sporting testimonial committee, could register for that and take advantage of it. If you had not done that, and the receipts came to you as an individual, you could choose to make a donation and use gift aid at a later date, and take advantage of what by international standards is a very generous relief. We do not think there will be an impact on the receipts that charities receive from some of these testimonials.

Mike Wood: I apologise, Ms McDonagh, but in my earlier declaration, I should have drawn the Committee's attention to the part of my entry in the Register of Members' Financial Interests about hospitality from the Football Association.

The Chair: I guess there might be a lot of people in that position.

Q36 Anneliese Dodds: I should like to refer back to our discussion on termination payments. I am perplexed, because I thought the panel contended that it was unclear how many people would be affected by those measures, yet the Exchequer's figures—the Minister referred to them—project a potential increase in revenue of £210 million. That must be modelled on the basis of the new income tax incidence, and must assume that at least some of the people affected will be drawn into the new employer NICs. Surely we have some indication of how many people will be caught by this measure. Perhaps members of the Committee could receive a letter confirming that, but I wish to push the panel a little more. If there is an estimation of the revenue impact, we must roughly know how many people will be affected.

Robert Jenrick: I think there are two questions there, and you are asking a different question from the one asked earlier. You are asking how many individuals or employers are likely to have to pay employers' national insurance contributions on their termination payments, but the earlier question was about the impact on the amount of money that goes to individuals, and whether we have modelled that. My answer to that second question was that that was very uncertain, because it will depend on the behaviour of the employer, and to what extent they pass that cost on to the employee. We think that around 72,000 termination payments are likely to incur employers' national insurance contributions; we have modelled that. The more difficult question, to which there is no accurate answer, is about how employers will behave in every case, and whether they will choose to pass all or some of the 13.8% on to the employee in the package they provide.

Q37 Anneliese Dodds: Thank you. I appreciate that clarification. On testimonials, does the panel know of any other uses of the concept of "customary" in tax law, and how that is operationalised?

Raj Nayyar: I think we will have to look at that and get back to you.

Q38 Anneliese Dodds: That perhaps underlines my most significant concern about this measure, which is that the term "customary" appears to be an empty category. Perhaps panel members believe that cases will fall into that category, but it seems that unless the testimonial is contractual, it is likely that it will not be "customary". A testimonial is a bit like a leaving present: every player would hope to have one, but they cannot necessarily expect it. I am concerned about this woolly language creeping into tax law, but perhaps the panel will relieve me of that concern.

Raj Nayyar: HMRC has received guidance on that, and it will ensure that it is clear and properly signposted, so that employers and testimonial committees can work out what it means in their circumstances.

Robert Jenrick: Perhaps we can send you a copy of our guidance. This is very long-standing, and a body of case law in this area helps to identify what we mean by "customary". There are cases of testimonials that would be considered non-contractual but customary; an example would be if it was the custom that once a player had played for a club for 10 years, they automatically received a testimonial, although that was never written into their contract. A cadre of testimonials would fall into that category, and have done so historically.

Q39 Anneliese Dodds: It would be very helpful if the Committee could have that. It would have been useful to have it before the sitting, because the description given previously by a Minister—not this Minister, I hasten to add—suggested that "customary" might apply if there was a testimonial every year for a departing player or a particular group of players. Anybody who understands a little about football—I should declare that I am the partner of a referee, so, sadly, I know it inside out—knows that it is fairly unlikely that one player would retire every year; that would be slightly strange, so it would be useful to have that guidance.

Robert Jenrick: It is in the public domain, so it was available to all Committee members, but I am happy to supply that.

Q40 Bill Grant (Ayr, Carrick and Cumnock) (Con): It is a pleasure to serve under your chairmanship, Ms McDonagh. Testimonials are common among sports groups, and they are not necessarily confined to football—they occur in cricket, rugby and so on. One would assume that there was consultation or engagement with clubs or representative bodies. What feedback did you get from them about the changes you propose?

Robert Jenrick: our interest in reforming national insurance contributions for sporting testimonials is long-standing, as is our interest in reforming termination payments, so this measure has been considered for some time. We consulted on it. Inevitably, in the course of that, we got representations from a number of sporting bodies, and Treasury officials and Ministers met some of them. For example, my predecessor, David Gauke, who was then Financial Secretary to the Treasury and is now Lord Chancellor, met the England and Wales Cricket Board, which took a particular interest in this measure. As a result, we took the decision to increase

the threshold from £50,000 to £100,000. That is a significant change. Evidence we produced in 2013 suggested that the average applicable testimonial raised around £72,000 a year, so the change will take the vast majority of testimonials out of this measure, which applies only to testimonials that bring in significant receipts.

As far as I am aware, we have not received any representations from sporting bodies since we made the changes to income tax two years ago, and we have received no further representations from sporting bodies since I introduced the Bill a few weeks ago, so I think it has been received reasonably well.

Q41 Peter Dowd: May I follow up on a point that Mr Wood made? I felt a certain amount of ambivalence about the statement that the impact on the charity sector would be minimal. Any pound whatever lost to the charity sector is a loss to the charity sector and to the community, so I am slightly worried that the attitude seems to be, "It's not much." It will be something. In today's society, given austerity, any loss to the charity sector is crucial, so it would help if we firmed up at some point what we believe the loss will be.

Robert Jenrick: Perhaps I can firm that up now. If the sportsperson used payroll giving, the loss would be zero. The individual and the sporting testimonial committee need to register for payroll giving, which is available without limit. In that case, there will be no loss to the charity whatever.

Q42 Peter Dowd: That is right, but that takes me to my second point, which is that you have almost bureaucratized the process. We are moving from a much simpler process to one in which I suspect the onus will be on the organisation or the individual to make a separate declaration. You can clarify that for me if you want, either today or subsequently.

May I ask a couple more questions? The first is on the loss in the last few years as a result of some sporting testimonials income incorrectly being excluded from national insurance contributions. Secondly, can you confirm how much HMRC receives in income tax and national insurance contributions because of contractual and non-contractual sporting testimonials?

Simon Smith: On the second point, I do not think we have a box on methods of collection specifically to note that money is coming in from a contractual or customary sporting testimonial. We would not have a precise figure for that, I don't think. Raj?

Raj Nayyar: No, we do not.

Simon Smith: We would not have that figure.

Robert Jenrick: That is because it would just count as part of your employment. It would just be another payment in respect of your employment.

Simon Smith: Exactly. We would collect it as we would earnings. That is essentially the role that it is performing in that instance.

Q43 Peter Dowd: Given that answer, can you provide any examples of the confusion that employees have had with the previous tax and national insurance treatment of termination awards?

Raj Nayyar: Long-standing tax and national insurance treatment has relied on an old 1927 case. In that case, it was decided that where a sportsperson received a benefit, or income from a benefit, that was not earnings.

However, since that time, there have been important changes to the tax and national insurance scheme. For example, there was the introduction of the benefits code, which taxes benefits in kind. That was replicated for national insurance contributions. More recently, there have been changes to the Income Tax (Earnings and Pensions) Act 2003 for disguised remuneration—changes that, in certain circumstances, place a tax and national insurance liability on payments by a third party. Those developments threw the treatment of sporting testimonials into a bit of a quandary, because they had overtaken the 1927 case, but HMRC guidance had not been fully updated, and was still based on the 1927 case. The Finance Act 2016 was introduced to try to make that clearer for income tax, and this Bill just follows up for national insurance contributions.

Q44 Peter Dowd: I am glad you mention the point about the Finance Act 2016. Do you think it has succeeded in doing what you intended it to do? Or are you not quite sure yet? Is it too early to say?

Raj Nayyar: From what we can tell, it has; we have no indication to the contrary. I am sure we would have been notified or been contacted if it had not resolved some of the uncertainty.

Simon Smith: It has definitely put the legal position beyond doubt, whereas before there was this contradiction between the case law and other bodies of legislation. Now it is very clear for tax what the position is, so in that sense, it has met its objective.

Raj Nayyar: The legislation has not gone as far as, for example, the disguised remuneration legislation, which places a tax and class 1 employee and employer liability on certain third parties. This is only employer NICs after a £100,000 threshold.

Robert Jenrick: It is a generous level at £100,000. It is only the employer side. Speaking as somebody who enjoys watching sport, you want to support sportspeople, but have to be aware of other individuals whose careers can be quite short. There are other examples that have come to us, such as people in the performing arts, ballet and many other areas. That would possibly include MPs, whose career prospects are not always very good when they leave the job. I think £100,000 is, by comparison, a generous situation.

The Chair: If there are no further questions from Members, I thank the witnesses for their evidence.

Examination of Witnesses

Bill Dodwell and Colin Ben-Nathan gave evidence.

10.25 am

The Chair: We will now hear oral evidence from the Office of Tax Simplification and the Chartered Institute of Taxation. We have until 11.25 am for this session. Will the witnesses please introduce themselves?

Bill Dodwell: Hello. I am Bill Dodwell, tax director of the Office of Tax Simplification. I was appointed to that role in January this year.

Colin Ben-Nathan: I am Colin Ben-Nathan. I am chairman of the employment taxes sub-committee of the Chartered Institute of Taxation.

Q45 Peter Dowd: I will ask the same question that I asked the Minister and his colleagues. Angela Knight, the then chair of OTS, said in November 2016:

“Our independent review has demonstrated...that some will gain and others will lose from any change.”

Can you tell us who are the losers and the winners from this particular change?

Bill Dodwell: We do not have data on the winners and losers of putting national insurance on termination payments. That report covered the whole issue of aligning national insurance contributions with income tax in relation to employment income. That meant making sure that the base was the same—that the amounts you charge tax or national insurance on are identical. There are significant differences at present. Secondly, it meant putting national insurance contributions on to an annual cumulative basis, like income tax. That is different from the current system of national insurance, which is charged on a pay period by pay period point, with one exception for company directors, who otherwise had an avoidance opportunity that is closed by putting it on an aggregate basis.

The evidence that the OTS gathered for those reports in March 2016 and November 2016 was that there would be something like 7.5 million winners—people paying less as a result. On average, they would get about £170 a year more, but obviously that is an average. There would then be about 5.5 million losers—people paying more—and their average payment would be about £260 a year. You will be aware that the Chancellor at the time announced that that would not be moving ahead.

Q46 Peter Dowd: Given that you made these suggestions and the Government have taken them up, can you give us some examples of the confusion employers had with the previous tax and national insurance treatment of termination awards?

Bill Dodwell: The March 2016 report, which specifically refers to it, says:

“Often employers apply NICs to termination payments when they are not required to, and end up making NICs overpayments.”

I do not have access to exactly how much. The OTS does not have the same level of analysis that HMRC does, but it did pick up evidence of that.

Q47 Peter Dowd: How substantial was that evidence?

Bill Dodwell: I cannot give you an underlying view. Much of it is provided by people who give evidence to the OTS on a voluntary basis. We seek evidence from as many people as we can, but it is not the same as doing a complete population analysis, which HMRC can do. We cannot do that.

Q48 Peter Dowd: Would you characterise the introduction of a new class 1A NIC charge as an anti-avoidance measure, or as a measure designed to simplify the tax code and raise revenue?

Bill Dodwell: It is very hard to give you a clear answer. I think it is both. I was listening to the evidence from the previous session, and there were clearly some people who were steering payments in a particular way to avoid paying national insurance. The general OTS view is that you make it easier for everybody to understand

the system if both employers and employees understand it better, and if the tax and national insurance base is the same. That is not just on income, such as termination payments; it is also on expenses.

Q49 Peter Dowd: I may come back to that at some point, if I may. Can I turn to the Chartered Institute for Taxation? Do you have an opinion or any observation on the time it has taken the Government to bring forward these proposals for a new class 1A NIC charge? The original announcement was made in 2016.

Colin Ben-Nathan: Yes. As has been said, there is the argument for levelling the playing field on income tax and national insurance contributions. I am sure we will come on to discuss how that is being done. The genesis of the changes that we are now talking about—the national insurance changes—was in an OTS report a few years ago, which was all about simplification of the system. There is an important point on simplification. There is also a point on the amount of revenue that is raised from any particular measure and how that measure is introduced. We know that—in relation to this particular measure, because we have been given the figures—there is, in aggregate, an amount of £200-odd million, which is being raised by the imposition of class 1A national insurance. We will talk about how that is being done.

This measure was part of a much wider set of proposals that ultimately has not been taken forward. The income tax changes that were made covered not just this proposal in relation to the question of what the level of the £30,000 limit might be, but foreign service relief and pay in lieu of notice. That was another area that was legislated but not taken forward in relation to some of the earlier proposals that were looked at. In fact, we are looking at a particular proposal here, which is the end point for levelling the playing field and the £30,000 limit.

Q50 Peter Dowd: Does that fit in with the broader proposal? It was referred to in the 2016 press release as being just one step forward in this area. Do you feel that we have ground to a halt at this stage?

Colin Ben-Nathan: As we said at the time, we thought the proposals that were put forward by the Office of Tax Simplification had a lot of merit in trying to simplify a very difficult area, which has occupied the courts, employers, employees and HMRC for many years. Proposals were put forward and consulted on at the time, and we responded to that consultation. Views varied, but ultimately the Government decided that they did not wish to take forward a broad simplification platform and focused on the points that I mentioned previously. Obviously, that was a Government decision. Simplification can still be effected if there is the will and consensus on how to do it.

Q51 Peter Dowd: Yes, and that is the sense that I get. I am not asking you to confirm my sense, but I sense that it has got thus far and no further at this stage.

Part of the Government’s rationale for the introduction of a new class 1A NIC charge on the termination of payments was that it is designed to address employees’ current confusion about national insurance and tax treatment of those awards. In your assessment, does this legislation adequately address that confusion, or is

there a danger of perhaps complicating it in the light of the fact that it has not gone further, à la the previous answer to my question?

Colin Ben-Nathan: I think we would accept that this is a difficult area, but we have prepared evidence for the Committee that you will have seen. We have noted that the introduction of class 1A in relation to cash payments, which will typically occur in relation to terminations—not always, because there will be benefits in kind, but it is typically cash—is an unusual move. We understand the Government's rationale for wishing to impose a charge in the first instance in relation to employers only. That is what class 1A national insurance does. Class 1 national insurance, apart from one exception, which we note, generally imposes national insurance both on employees and employers. There is an exception, and it relates to those above retirement age, where secondary, or employer national insurance contributions are paid, but primary, or employee contributions are not paid. That was something that we pointed out in our note. You then get the position where you have to ask how easily employers are going to relate to class 1A being imposed in relation to a cash payment—and the way in which it is being imposed. Typically, class 1A will apply to benefits in kind, which are made during the year, though the actual contribution itself is paid after the end of the year, following a submission on form P11D(b), and so on. There will have to be a communication exercise in relation to employers now having to apply class 1A during the year—that is the point that we make about this particular measure being unusual.

Q52 Peter Dowd: I am glad that you have talked about how unusual it is, because that is one of the questions I asked, which you have answered—so that is two for the price of one. An additional justification given by the Government for wider reform of the tax and national insurance treatment of termination awards has been that a small group of well-advised employers has abused the current loophole, allowing them to avoid paying additional tax and NICs. Without breaches of confidentiality, of course, have you ever come across instances of that type of avoidance in your professional life?

Colin Ben-Nathan: I would say that, like many areas of the tax code these days, it is very complicated. You have got a varying series of provisions in relation to contractual earnings, termination payments, retirement benefits, restrictive covenants; there is a whole tapestry of legislation here about which it is very easy to get confused. There is one thing in terms of manipulation of the system, but there is another simply in terms of understanding what the rules are. Typically, we find employers wanting to take advice, to make sure that they get things right. The position at the moment is that we have a code. Section 403 was mentioned: it talks about termination payments that are non-contractual. That is the provision we have, and on redundancy payments as well, where there is a £30,000 exemption. That is specifically there: it has not been changed for a bit, as was said—it was the late 1980s—but it is there for a purpose. Employers will typically want to know whether they are within that exemption or outside it. It is quite important, too, because as well as the £30,000 exemption that was mentioned, there is disability, injury and so on. That particular part of the code is really important. Whether I would go so far as to say that employers were

manipulating things, I don't know, but it is important that employers understand where they are. Overall, our view—again, it goes right back to 2015, when the Office of Tax Simplification report stated that there was an opportunity to really simplify things. That is the way that I would answer the question. I am not sure about manipulation, but I would say that there is a lot of confusion.

Q53 Peter Dowd: I have one more question for the Office of Tax Simplification. Out of the 1,200 tax reliefs that we have—this is not directly linked, but would you consider this to be a low-hanging fruit?

Bill Dodwell: Yes. This is a pretty simple, fairly restricted issue. The evidence given by the Minister shows the small number of people that this affects.

Q54 Paul Scully (Sutton and Cheam) (Con): On the two thresholds of £30,000 for termination payments and £100,000 for testimonials, are they at the right level, or do you have any comments about where those sit?

Bill Dodwell: I do not think that we at the OTS have a specific view on those levels, no.

Colin Ben-Nathan: It has been commented upon that the £30,000 limit was last increased in the late 1980s and has not been increased since. We get back to the point of whether a measure is revenue-raising or revenue-neutral. One of the points that we raised previously on feedback is that, and Bill will talk for the OTS, if there was going to be an overall simplification—which is what we were looking at—the sense was that it may be revenue-neutral. At the moment the position is that revenue is being raised, but the actual threshold of £30,000 remains static. It will now apply for the purposes of both income tax and class 1A national insurance. Where relief should sit is, of course, a matter of debate given the pressures on the public Exchequer, but the comment is that it is overall revenue-raising.

Q55 Kirsty Blackman: I was going to ask Mr Ben-Nathan about the collection mechanism, but you have answered that. Do you share my slight concern that employers who currently do not use any benefits in kind, so do not have any liability for class 1A, will potentially be brought into liability by this change?

Colin Ben-Nathan: It is true that if they do not deal with benefits in kind, if there is a termination point and it falls within the special rules and is above £30,000, class 1A national insurance from next year will be payable. That is the way the Bill is presented.

Q56 Kirsty Blackman: My second question is around the different language used in the two parts of the Bill. I raised this issue earlier in questions to the Minister. Will you explain more about your concerns or queries around this?

Colin Ben-Nathan: In relation to the termination payment part of the Bill, we have a cross-reference back to the taxing section that refers to the £30,000 limit and so forth. That seems pretty clear to us in terms of what should and should not be subject to class 1A national insurance. When we look at sporting testimonials, it is not so clear because we are effectively saying that the amount of general earnings should be subject to class 1A national insurance. The question therefore is: is it all

the general earnings that are brought in by section 226E, which is effectively everything that is coming in, or is it those earnings, less the £100,000 reflected in section 306B, which is the exempting section? It is simply a question for the draftsmen to clarify that we have actually got that right. I cannot believe it has not been thought about, but it did occur to us in looking at the Bill.

Q57 Kirsty Blackman: I have a couple of questions for Mr Dodwell. On the implementation of these changes, I am not sure how much evidence or guidance the Office of Tax Simplification provides to Government. In referring to equality of treatment between NIC liability and tax liability, did you suggest that the way to sort this out in this case would be for the Government to use class 1A contributions?

Bill Dodwell: No. All our reports are on public record and published on our website. That report did not specifically suggest class 1A.

Q58 Kirsty Blackman: Do you think that using class 1A contributions liability to make this change will be simpler for employers, or might it make it more complex for them?

Bill Dodwell: I think arguably it makes it more complex. But it has been done specifically to preserve an employee relief. That is the logic. If we had no reliefs at all, it would be a simpler system, but reliefs are there for a purpose. We do not just want to argue purely for the simplest system always.

Q59 Kirsty Blackman: I have one last question for both of you. I have been raising issues about road maps and where the Government intend to get with anything that they are doing, and how they intend to get there. I am concerned that in many cases, there does not seem to be a grand plan. In relation to tax simplification, generally and also specifically around income tax and national insurance changes, are both of you comfortable that you know where the Government are looking to get to and how they are looking to get there? Or are you not comfortable about that?

Bill Dodwell: I do not think there is evidence that the current Government have a plan to align the income tax and national insurance base completely. There is no evidence to support that. There are revenue-raising and revenue-losing parts of all that, so I am sure that the Government will be thinking about that.

We have also talked about trying to make the collection and enforcement mechanisms simpler to understand, at least on the national insurance side. We understand that HMRC is doing some work on that. Again, it is not a simple system, because national insurance is not the same as income tax. The two came from a different place; maybe we should argue that they should be one, but they are clearly not identical at all. We have to preserve those differences unless we go for a full-blown merger.

Q60 Kirsty Blackman: Mr Ben-Nathan, have you anything to add?

Colin Ben-Nathan: Whether it is this Government or any Government, there is a need to look not just at national insurance and income tax, but—speaking as

chairman of the employment taxes sub-committee—at the whole question of employment, self-employment and the gig economy. Matthew Taylor's work and the Government's response are ongoing and very important. We need a road map—I think that would help us. There have been attempts to move towards some sort of coalescence, for example around national insurance, employees and employers. It is a difficult area and there are strong views one way and the other, but further moves in that direction would be really helpful, because the gig economy is here and we have to deal with it.

We have to look at these questions; I think that the Government are looking at that. The sooner we can do that, the better, but obviously other matters are occupying us at the moment.

Bill Dodwell: The OTS is about to publish a report—on Thursday, I hope, subject to everything going well—that I think will allude to some of that difference. The biggest financial part of the equation is, of course, employers' national insurance, which is levied on employment but clearly does not apply where there is self-employment or qualifying freelance work. That is such a major and material issue that going from zero to a lot of money would not—for any Chancellor, I am sure—be a simple solution.

Q61 Bill Grant: In relation to termination awards, the Chartered Institute of Taxation has made some negative comments about collection methodology and timing of collection. It suggests that there is an administrative burden and that it is quite complex—colleagues have touched on some of that. Is the institute justified in its concerns? Can they be overcome by information or guidance from you to employers?

Colin Ben-Nathan: We, as the Chartered Institute of Taxation, make points and the Government then decide what the policy will be. We have the Bill in front of us; I am sure that guidance will be issued, and I hope it is helpful. It is useful to have examples in guidance—we might come on to that in relation to other matters as well. Yes, ultimately employers will follow the rules as set down. We simply make the point that it is unusual for a class 1A charge to be imposed under real-time information, because normally that is not the case; the charge is paid after the end of the year.

Q62 Bill Grant: One supplementary question: will that guidance be timeously delivered to the employers or those responsible, rather than as an afterthought?

Colin Ben-Nathan: It is very much for HMRC to answer on the timing. All I would say is that if guidance is prepared in draft, the Chartered Institute of Taxation will be very happy to comment on it.

Q63 Anneliese Dodds: I am grateful to our experts for their very helpful testimony. I am sorry to return to testimonials and the concept of "customary", but our previous witnesses suggested that there was a body of case law around it and that the concept was well understood. However, I understand that there is some concern about lack of clarity in the scope of how "customary" is defined—whether it relates to a particular team and its previous practice, or to sport as a whole. I note that there have been some high-profile football players recently who have not received testimonials when one might have

been expected. I wonder whether, on your understanding, the concept is sufficiently fleshed out, or whether additional guidance might be useful.

Colin Ben-Nathan: Again, I am happy to comment from the CIOT point of view. That is really difficult area, because one is effectively trying to look at whether something is either contractual or quasi-contractual by way of customary expectation, and is taxable because it is earned from employment, or if it is not such, and is to do with personal esteem and so on. All those issues were raised in *Reed v. Seymour* in 1927, which was mentioned.

That is a difficult area and in our evidence, we made the point that if we do not legislate along those lines, it would be really helpful—I am not suggesting that it would be easy, but that is why we need to do it—to have at least some examples of what HMRC believes is and is not customary. For example, if something regularly happens to somebody and they know and expect it to happen after they have served 10 years, maybe that is customary, but what if it is not 10 years? What if it is eight years, seven years or five years? We make that point because we think it is very difficult when it comes down to it.

Q64 Anneliese Dodds: Thank you—that is very helpful. I was intrigued by comments in some of the testimony provided to us about there being an analogy with the treatment of tips in restaurants. They might be viewed, to some extent, as a discretionary payment made by those who have enjoyed a service, and fans do the same thing when they buy a ticket.

The big difference is that there are many costs associated with a testimonial, and if those costs end up being much bigger than expected, they can almost swallow up all the revenue that comes from the testimonial. I wonder, on the first part of the equation—before one gets to the issue of tipping into £100 k—whether you feel that the allocation of costs is sufficiently watertight. The different players set the fee for which they will play for their teams. Is there sufficient clarity in that area?

Colin Ben-Nathan: Obviously, testimonials work in different ways. Essentially, one is looking at the relationship between the testimonial committee and the individual who would receive the money in the first instance, and at the nature of the amount of money at the gross point and whether or not it is earnings. Yes, you are right; there will be costs attached to that. The Bill really speaks to the gross amount that actually comes through to the individual.

The point about tips is interesting. It has been noted that an individual who receives an amount in relation to the position on income tax can use payroll giving, or possibly gift aid, to ensure that the amount effectively goes to a charity with no tax leakage. The interesting thing about national insurance is that is not the case. There is a point there, particularly about the amounts that go to charity.

Bill Dodwell: We covered the difference between gift aid and give-as-you-earn in our March 2016 report. We did not recommend that it was a high-profile case to try to resolve. There is essentially no national insurance saving for gift aid. Gift aid is something like £4 billion or £5 billion a year, whereas payroll giving is something like £130 million, so they differ by a significant order of magnitude. Obviously, gift aid does not just come out of earnings, but can come out of broader income.

Q65 Peter Dowd: On the argument about what is customary, let us say that a footballer starts with club A when they are 16, 17 or 18, moves on to another club when they are 21 or 22, where they stay until they are 26 or 27, before moving on to another club. Now, when they are about 32 or 33, they might have a testimonial—people used to be much older when they had them. Testimonials might not be customary in a particular club, but are they not customary for players in the sporting world, whoever they are? It seems to me to be fairly straightforward and simple. Clearly, the expectation that is on the clubs is the expectation from the sport and the history going back—way beyond the 1927 judgment, in fact, to the end of the previous century. That was when testimonials were introduced, because the money players used to get was pretty abysmal.

Colin Ben-Nathan: Yes. I think we also need to remember that the National Insurance Bill we are looking at does not use the word “customary” or talk about “normal practice”. It is simply talking about whether something is general earnings in the context of the income tax legislation. What we are really trying to work out is whether something that is received is received in the course of an employment, in relation to an employment, by virtue of an employment or all the glosses on the words and the judgments we have had over the years, or whether it is outside that and effectively relates to personal esteem, qualities and so forth. That is a really difficult line here.

In some ways, the income tax legislation is trying to draw a line and say, “In principle, we’re going to tax everything, whatever it is, if it’s not already taxed.” The first thing that will happen is that they will tax it; the second thing is that there will be an exemption of £100,000, but the exemption will apply only to that which is not ordinarily taxed. We have a question where some sort of guidance, comment or examples would be helpful, for all the reasons that you and others have expressed.

Q66 Peter Dowd: In relation to the point you made about national insurance contributions, one of the questions asked earlier, which you may have heard, was about the loss—or whatever phrase we want to use—to the charity sector. Do you accept, do you think or do you believe that there will be a loss to the charity sector as a result of this legislation?

Colin Ben-Nathan: I have not done the numbers. I think we were trying to get to some of the numbers before in relation to payments that would be above £100,000 in circumstances where a donation was envisaged to be given to charity. Clearly, in that context, there will be a class 1A national insurance charge and therefore there will be an amount going to the Exchequer rather than necessarily in full through to the charity. The amounts mentioned are negligible, but in principle—in theory—one would say there is a measure of loss.

Bill Dodwell: We would hope that there would be good HMRC guidance, which would make the point that the testimonial committee should register for payroll giving and hand the money over that way. Then, as the Minister said, there would be no loss whatsoever. However, that is administration, so the importance of good, straightforward HMRC guidance is to the fore here.

Q67 Peter Dowd: Do you think it adds a layer, given that a testimonial committee would have to register? Do you acknowledge that there is an extra layer—I do not

[*Peter Dowd*]

like to use the word bureaucracy, but another layer—on top of what those testimonial committees already have to do?

Colin Ben-Nathan: Yes, of course, if any additional registration is required.

The Chair: Unless I have missed anybody, and I hope I have not, that brings us to the end our oral evidence session for this Bill. I thank the witnesses for giving their evidence to the Committee.

The Committee will meet again at 2 pm to begin our line-by-line consideration of the Bill. I point out to members of the Committee that that will not be here in the Boothroyd Room, but in Committee Room 12.

Ordered, That further consideration be now adjourned.
—(*Amanda Milling.*)

11 am

Adjourned till this day at Two o'clock.