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Economic Affairs Finance Bill Sub-Committee

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The Rt Hon Jesse Norman MP

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HM Treasury
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22 January 2021

Dear Jesse,

Economic Affairs Finance Bill Sub-Committee – follow-up inquiry into the Loan Charge

As you know, on 19 December 2020 the House of Lords Economic Affairs Finance Bill Sub-Committee published its report into the draft Finance Bill 2021, *New powers for HMRC: fair and proportionate?*¹

During the Sub-Committee's inquiry, we continued to receive submissions concerning the Loan Charge, an issue we had previously addressed in our 2018 report *The Powers of HMRC: Treating Taxpayers Fairly*,² but which is clearly a matter of ongoing public concern.

The Loan Charge also continues to be the subject of news coverage, along with reports on the promotion of tax avoidance schemes, including the targeting of workers returning to the NHS to help tackle the COVID-19 pandemic. The publication of the report of the Independent Loan Charge Review (known as the Morse Review) in December 2019,³ and HMRC's recent report on its actions in response to this,⁴ have also attracted interest.

While our report into the draft Finance Bill highlighted the Loan Charge, the Sub-Committee agreed that, given this background, we would look at the subject in further detail. We

¹ Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th report, Session 2019–21, HL Paper 198)

² Economic Affairs Committee, *The Powers of HMRC: Treating Taxpayers Fairly* (4th report, Session 2017–19, HL Paper 242)

³ Independent Loan Charge Review, *Independent Loan Charge Review: report on the policy and its implementation* (December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf [accessed 21 January 2021]

⁴ HMRC, *Independent Loan Charge Review: HMRC report on implementation* (3 December 2020): <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation/independent-loan-charge-review-hmrc-report-on-implementation> [accessed 21 January 2021]



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therefore held follow-up evidence sessions on the Loan Charge in December 2020, and requested written evidence from key organisations. All written and oral evidence is on our webpages: <https://committees.parliament.uk/work/896/loan-charge-followup/>

I am writing to highlight the key findings from the evidence we heard, and to set out recommendations for action by the Government. The Sub-Committee looks forward to your response to these recommendations.

Summary of evidence

The evidence we heard fell into two broad categories: first, the handling of Loan Charge cases, including actions taken by HMRC in response to the Morse Review; and second, the actions taken to tackle promoters of tax avoidance schemes more widely. This evidence is summarised below.

Handling of the Loan Charge

We note that, on 3 December 2020, HMRC published its *report on implementation*, which sets out progress that it had made on the Loan Charge since the publication of the Morse Review.⁵ This includes improving communications with taxpayers; progressing settlement arrangements; limiting the scope of the Loan Charge and, where relevant, refunding ‘voluntary restitution’ elements of payments made by taxpayers under settlements; spreading outstanding loan balances; and administration of payment arrangements.

Response to the Morse Review

The evidence we heard on HMRC’s response to the Morse recommendations was mixed. Meredith McCammond of the Low Incomes Tax Reform Group told us:

“HMRC has responded quite well to the Morse Review. It put out guidance quite quickly on the changes he recommended to the design of the loan charge, issued letters to taxpayers, and issued the draft legislation. It took on board the comments Morse made about its failings in its attitude to taxpayers, some of whom were in real distress”.⁶

The Loan Charge Action Group highlighted ongoing flaws they perceived with the way HMRC is administering the Loan Charge. For example, although HMRC had set an extended deadline of 30 September 2020 for taxpayers to reach settlement terms with them in order to avoid liability for the Loan Charge, “many people actively engaged in settlement discussions were denied the opportunity to settle” due to HMRC delays.⁷

The Loan Charge Action Group also noted that there seemed not to be equality of treatment between taxpayers, with people receiving different time-to-pay arrangements, different timetables for settlement, and different treatment over the granting of extensions to the 30 September deadline.⁸ They shared the results of a survey (conducted in December 2020) of 662 individuals which, among other matters, found:

⁵ HMRC, *Independent Loan Charge Review: HMRC report on implementation*, 3 December 2020: <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation/independent-loan-charge-review-hmrc-report-on-implementation> [accessed 21 January 2021]

⁶ Q 2 (Meredith McCammond, Low Incomes Tax Reform Group)

⁷ Written evidence from Loan Charge Action Group (LCF0002)

⁸ Written evidence from Loan Charge Action Group (LCF0002)



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- 27 per cent of those participating had completed the settlement process with HMRC since settlement terms were published;
- Over 84 per cent of participants do not feel that HMRC have dealt with their request to settle in a timely fashion;
- 44 per cent of participants were not informed by HMRC that pre-2010 loans were no longer subject to the Loan Charge; and
- 72 per cent said HMRC had not communicated clearly the actions required in relation to either settlement or the Loan Charge.⁹

The Loan Charge Action Group itself acknowledges that there may be some questions about the extent to which this survey provides a full picture of the current position. However, these findings are broadly supported by evidence received from other witnesses, including tax professionals engaged in trying to agree settlements with HMRC on behalf of affected taxpayers.

For example, the London Tax Network provided a number of case studies of taxpayers who may have been subject to the Loan Charge and so were in contact with HMRC over settlements. They cited one taxpayer with a large Loan Charge liability who had filed a return by 30 September 2020 and was looking to set up a time-to-pay arrangement. The London Tax Network told us:

“At the date of writing, HMRC have not yet processed the return. Every officer I have spoken to says that the client cannot set up a time to pay arrangement because there is no outstanding debt but that he can ‘make payments on account’ if he so wishes. I can only imagine how frustrating it must be to hear this as a taxpayer, when you have clearly stated to every person you have spoken to (after getting passed round many different departments) that you need to arrange a time-to-pay agreement”.¹⁰

Blanche Zaph of the Loan Charge Action Group also told us of problems in relation to contact with HMRC in arranging settlements. She said: “There have been so many delays; people have missed the opportunity to make a settlement ... in many cases, because of HMRC delays, they have missed bites of the cherry. There have been delays in paperwork and none of the amounts are confirmed. Everything is unclear and a mess”.¹¹

Gareth Parris of the Loan Charge Action Group said “the attitude towards and treatment of people has not changed at all. Errors are still being made, there are delays in conversations about settlement of the Loan Charge, there are discussions that do not really confirm whether you are going to be in the Loan Charge, and no final settlement discussions”.¹² Keith Gordon said that “HMRC are used to dealing with deliberate tax avoiders: they have not been able to recognise that the loan arrangements were largely entered into by unwitting avoiders”.¹³

When asked about HMRC’s response to the Morse Review and its subsequent actions, Mary Aiston, Director of counter-avoidance at HMRC, told us:

⁹ Written evidence from Loan Charge Action Group ([LCF0009](#))

¹⁰ Written evidence from London Tax Network ([LCF0003](#))

¹¹ [Q 27](#) (Blanche Zaph, Loan Charge Action Group)

¹² [Q 17](#) (Gareth Parris, Loan Charge Action Group)

¹³ Written evidence from Keith Gordon ([LCF0001](#))



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“Over the summer, colleagues in HMRC have ... supported some 5,600 customers to settle their use of disguised remuneration. It is a big-scale exercise and I am not going to sit here and say that in every single case we got our customer service to the level we wanted.

... in the Government’s response to the Morse review we acknowledged that we had in the past not always got our customer service right in every case. What I can say is that we have successfully supported thousands of people and, if anyone feels they have not had the service that they should have had from us, we take complaints very seriously”.¹⁴

Meredith McCammond noted that, in the *report on implementation*, HMRC had stated that there were 12,000 taxpayers who were identified as being impacted by the Loan Charge who had yet to file a tax return.¹⁵ Mary Aiston of HMRC acknowledged this figure and stated that HMRC is doing “considerable follow-up work and analysis to look at returns that came in where we were expecting the loan charge, and to ensure that everyone who needs to return the loan charge has done so and that people have returned the right figure”.¹⁶

In relation to concerns that were raised with us about HMRC’s approach to recovering amounts due under the Loan Charge, Mary Aiston told us that “there is no case where we have forced someone to sell their main home to fund a disguised remuneration settlement” and that they always endeavoured to live up to the commitments of the HMRC Charter, adding that HMRC was “working with people who we accept are sometimes in difficult circumstances and coming up with tailored solutions to support them to settle”.¹⁷

However, Blanche Zaph of the Loan Charge Action group told us that: “We know of people who have sold their homes. We know of people who have taken out second charges”. She added that a big determining factor was often age, as people of working age could take out large loans to cover their liabilities, while people beyond retirement age “risk losing everything they have ever worked for”.¹⁸

Finally, we heard concerns about the independence of the appointment process for advisers to the Morse Review. Keith Gordon told us that the Government “strongly counselled against [the Morse Review] taking anyone who had given advice to a parliamentary committee because, to use the words in the Treasury email, they were compromised”.¹⁹ When asked about this, Mary Aiston of HMRC told us that: “It was [Sir Amyas Morse’s] ask that they were people who had not had a public position in relation to the Loan Charge ... I would agree that being a witness at a committee hearing should not per se exclude people from getting involved in an independent review”.²⁰

Subsequently, the Loan Charge Action Group wrote to us to dispute this. They stated that, according to information contained in a Freedom of Information request, a Government official had in fact expressed reservations about the appointment of individuals who had

¹⁴ Q 33 (Mary Aiston, HMRC)

¹⁵ Q 10 (Meredith McCammond, Low Incomes Tax Reform Group)

¹⁶ Q 42 (Mary Aiston, HMRC)

¹⁷ Q 31 (Mary Aiston, HMRC)

¹⁸ Q 18 (Blanche Zaph, Loan Charge Action Group)

¹⁹ Q 20 (Keith Gordon)

²⁰ Q 32 (Mary Aiston, HMRC)



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appeared before a Select Committee. The Loan Charge Action Group also said that advisers appointed by the Review had expressed views on the Loan Charge or disguised remuneration schemes in the past, contradicting Mary Aiston's statement that people who had taken a public view on the Loan Charge were excluded from such advisory roles.²¹

Communications

We heard evidence on how HMRC had changed its communications practices since the publication of the Morse Review. Meredith McCammond of the Low Incomes Tax Reform Group stated that HMRC's new approach "shone through in improved communications. The wording of its letters improved and its advisers' soft skills in dealing with taxpayers improved".²² She added that HMRC is now "regularly sharing [template] letters with LITRG and other stakeholders such as TaxAid to ask us for our feedback and comments". Glyn Fullelove stated that there was now "a recognition that this is a different type of avoidance" affecting different groups of taxpayers,²³ while Andrew Hubbard added that it took HMRC some time to realise that some of those affected by the Loan Charge had not even been aware that there were issues with tax affairs.²⁴

However, Meredith McCammond said that not all letters have been shared with LITRG and "often we are not given very long to work out what our comments are or to comment cohesively". She added that, in some cases, communications were not effectively tailored; for example, agency workers who had been put into a disguised remuneration scheme may have had little awareness of its implications, and so may not have understood why they were being contacted by HMRC.²⁵ In written evidence, the Low Incomes Tax Reform Group also told us that HMRC "still seem to be having difficulty accepting the idea that many of those affected by the Loan Charge ... are vulnerable agency workers who are basically being exploited by engagers using loan schemes for their own ends".²⁶

We heard that there was still a gap between HMRC's commitments on improved communications and fair treatment, and the way taxpayers were dealt with in practice. The London Tax Network highlighted a case from October 2020, well after the Morse Review, in which HMRC had initially communicated their sympathy to a taxpayer who faced substantial liabilities, then wrote to the same taxpayer two weeks later to advise that they were adding Stamp Duty to their liability.²⁷

Spreading payments

The Government accepted a recommendation in the Morse Review that taxpayers should have the option to spread payments over three years. HMRC noted in its December 2020

²¹ Letter from Loan Charge Action Group to Lord Forsyth of Drumlean, 14 January 2020:

<https://committees.parliament.uk/publications/4332/documents/44078/default/>

²² Q 2 (Meredith McCammond, Low Incomes Tax Reform Group)

²³ Q 11 (Glyn Fullelove, Chartered Institute of Taxation)

²⁴ Q 11 (Andrew Hubbard)

²⁵ Q 6 (Meredith McCammond, Low Incomes Tax Reform Group)

²⁶ Written evidence from Low Incomes Tax Reform Group (LCF0005)

²⁷ Written evidence from London Tax Network (LCF0003)



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report on implementation, however, that less than 2,000 of 21,000 eligible taxpayers had done so.²⁸

Meredith McCammond of the Low Incomes Tax Reform Group discussed why this may be:

“First, the form that people have to use is online, and the paper version is quite tricky to get hold of. Secondly, the form that you have to complete to tick the box to say you want to make the spreading election actually asks you a whole raft of other questions. It asks you about the scheme names that you were in, the dates when you were in the schemes and the amount of income you received from the schemes. The people we represent do not have enough information or insight about their situation to be able to complete that form. Because they cannot complete the form, they cannot make the spreading election. That is really regrettable.”²⁹

Meredith McCammond noted that very few time-to-pay arrangements had been put in place, which she suggested may be related to the detailed income and expenditure assessments that were required to be paid. Andrew Hubbard told us, however, that the effect of the spreading election is not just to defer the payment, but to defer the liability; and because HMRC’s debt management unit will not deal with liabilities until they have actually accrued, it is not possible to arrange a time-to-pay arrangement where a spreading election is made because the liability has not yet arisen in law.³⁰

Concerns were expressed over the time limit for elections; in their written evidence, the Low Incomes Tax Reform Group noted that HMRC had recently extended the deadline to 31 December 2020, “but more time is needed to overcome these barriers”.³¹

Reasonable disclosure

Another measure introduced following the Morse Review was the provision excluding taxpayers from the Loan Charge where they had made ‘reasonable disclosure’ of a disguised remuneration scheme in their tax returns.

There were criticisms of the way HMRC had implemented this recommendation, with witnesses arguing ‘reasonable disclosure’ for these purposes had been defined too strictly and did not reflect the intention of the Morse Review. The Loan Charge Action Group stated: “What the Government did was alter the defined ‘reasonable disclosure’ to in effect mean ‘full disclosure’ ... ‘reasonable disclosure’ should be that people did what was required at the time, not what HMRC would like to now say they should have done in hindsight. This is yet more retrospective re-writing of the rules”.³²

Keith Gordon stated that “the statutory wording will not help taxpayers who had been taken out of self-assessment by HMRC, nor where disclosure was made in other forms; nor even

²⁸ HMRC, *Independent Loan Charge Review: HMRC report on implementation*, 3 December 2020: <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation/independent-loan-charge-review-hmrc-report-on-implementation> [accessed 21 January 2021]

²⁹ Q 5 (Meredith McCammond, Low Incomes Tax Reform Group)

³⁰ Q 5 (Andrew Hubbard)

³¹ Written evidence from Low Incomes Tax Reform Group (LCF0005)

³² Written evidence from Loan Charge Action Group (LCF0002)



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where HMRC were given details of a DOTAS³³ Scheme Reference Number on a taxpayer's tax return".³⁴

Andrew Hubbard made similar observations:

"There is an element of retrospection in this approach, because what might have been a reasonable disclosure under the law, as it was understood by most people at the time, was that you were receiving a beneficial loan and therefore you put a beneficial loan charge in, not that you treated the loan as if it was remuneration ... I suspect very few people would ever have gone to the extent of saying on their tax return, 'I received the following amount by means of loan that you, HMRC, might consider to be earnings'".³⁵

Glyn Fullelove added: "More discussion may be needed with HMRC about the interpretation of [reasonable] disclosure. HMRC may currently feel bound by certain precedent and think that it cannot relax the meaning of the term further".³⁶

Voluntary restitution payments

Where taxpayers had made 'voluntary restitution' payments for liabilities which were subsequently excluded from the scope of the Loan Charge, the Morse Review proposed – and the Government accepted – that HMRC should repay this money to taxpayers. However, the *report on implementation* said that no refunds of such voluntary restitution payments had yet been made.

Mary Aiston of HMRC told us:

"The repayments position is actually really complicated. It needs to fit with a wide range of settlements that have been made over the period of the disguised remuneration story. Unfortunately, and I am sorry for this, when we first used the scheme, we found that it did not work in practice in all circumstances.

... We have written to around 1,600 customers who we were aware of, and we think they are the totality of who will be entitled to a refund or, in some cases, a waiver of tax for voluntary restitution. Just over half of them have replied to us, and we are now working through at pace, but these are complex arrangements, and getting to the refunds is complex. We cannot just take the initiative and refund the money for a legal reason".³⁷

Andrew Hubbard told us that "the forms are very, very complicated. HMRC fills in some information and gives a relatively short amount of time—I think it is two weeks—for people to respond. With the best will in the world, it is almost impossible to understand whether those calculations are right or wrong".³⁸ Meredith McCammond added that "the fact that people have to make an application rather than the refund being automatic means that a lot

³³ Disclosure of tax avoidance schemes

³⁴ Written evidence from Keith Gordon ([LCF0001](#))

³⁵ [Q 3](#) (Andrew Hubbard)

³⁶ [Q 4](#) (Glyn Fullelove)

³⁷ [Q 43](#) (Mary Aiston, HMRC)

³⁸ [Q 12](#) (Andrew Hubbard)



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of people are going to take the view: ‘I’ve paid it. I should let it go, put it to bed and get closure’”.³⁹

Loan recalls

The Loan Charge Action Group told us that a significant group of people who had settled with HMRC are now receiving ‘loan recalls’ – “in other words facing demands to pay back their outstanding loans by whomever owns the loan balance”, with those loans often having been sold on by the original provider. The Loan Charge Action Group stated that “people are being pursued for recovery of all the money they were paid and simultaneously being taxed on it by HMRC”.

The Loan Charge Action group added that “the fact that loans are being recalled exposes the fundamental unfairness of HMRC’s approach. HMRC insists the loans were not loans, but income, yet are taking no account of recall. This is cruel as well as unfair”.⁴⁰ The Low Incomes Tax Reform Group told us that action should be taken to protect taxpayers from this situation.⁴¹

Tackling promoters and tax avoidance schemes

Targeting promoters of tax avoidance schemes

We heard that, even if issues around those schemes within the scope of the Loan Charge were to be fully resolved, there are still new tax avoidance schemes in existence and being promoted, and that these should be the focus of HMRC’s activity in the longer term. We covered the Government’s proposals for tackling promoters in our report on the draft Finance Bill 2021, generally welcoming the proposed measures.⁴² We note that the Government recently announced that they would consult in 2021 on further additional steps to tackle promoters.⁴³

Mary Aiston of HMRC told us that “it is an important part of our job to be tackling the promoters and trying to take them out of the market. I think this issue requires a response across the piece – absolutely tackling promoters all the way through to trying to raise awareness among contractors and others to encourage them to ask questions before they sign up”.⁴⁴

Glyn Fullelove, immediate past president of the Chartered Institute of Taxation, said that HMRC had improved its approach in dealing with new schemes; he told us that “HMRC now recognises that there is a greater role for it in what you might call consumer protection ... it is now looking to stop more schemes at source rather than to follow up with taxpayers after the schemes have been implemented”.⁴⁵

³⁹ Q 12 (Meredith McCammond, Low Incomes Tax Reform Group)

⁴⁰ Written evidence from Loan Charge Action Group (LCF0002)

⁴¹ Written evidence from Low Incomes Tax Reform Group (LCF0005)

⁴² Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th report, Session 2019–21, HL Paper 198)

⁴³ ‘Government commits to do more to tackle promoters of tax avoidance schemes’, House of Lords, 16 November 2020: <https://www.parliament.uk/business/lords/media-centre/house-of-lords-media-notice/2020/november-2020/government-commits-to-do-more-to-tackle-promoters-of-tax-avoidance-schemes/> [accessed 21 January 2021]

⁴⁴ Q 36 (Mary Aiston, HMRC)

⁴⁵ Q 2 (Glyn Fullelove, Chartered Institute of Taxation)



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Glyn Fullelove also told us that “the promoters have been difficult to keep up with because they have exploited the use of the internet and search engines to sell directly to people or to set up umbrella companies through which they have sold. They have based themselves offshore. They have closed their operations down as soon as an investigation has been started”.⁴⁶

Meredith McCammond of the Low Incomes Tax Reform Group told us that “it seems to me that [promoters] have had little fear of HMRC and the promoters’ regime to date. I am not convinced that tweaking that regime by adding further measures such as making them get professional indemnity insurance will have much of an impact”.⁴⁷

The Loan Charge Action Group highlighted what they perceived as the more lenient treatment given to promoters by comparison with taxpayers. They told us that “no promoters of schemes subject to the loan charge have faced any action from HMRC for (mis)-selling these schemes, nor have they been asked to pay a penny for doing so; whereas those to whom they promoted, sold and recommended the schemes are facing ruin”.⁴⁸

Targeting the marketing of schemes

It was agreed by witnesses that, as well as targeting schemes and their promoters at source, there was also a need to tackle the way schemes were marketed in order to reduce the number of people who were exposed to them. This included action being taken by the Advertising Standards Authority (ASA) to stop promoters making misleading claims, and by liaison with online outlets such as Google to tackle marketing via the internet. We were told that HMRC had recently taken steps in this direction to combat scheme marketing.

Glyn Fullelove told us that HMRC had long needed to undertake “earlier engagement with Google, the platforms and the ASA and to ensure that these businesses had no business to do, rather than trying to prosecute them later”.⁴⁹

Andrew Hubbard praised HMRC’s work with ASA, telling us that this “seems pretty important and perhaps more likely to achieve something than some of the penalty regimes for promoters”.⁵⁰ Meredith McCammond added that this activity “is probably worthwhile, because it is about closing down the websites and removing false advertising from search engines. It will not stop the promoters completely”.⁵¹

However, the Loan Charge Action Group were more critical, stating that “HMRC have merely referred some schemes to the ASA over the wording of adverts. The promoters simply change the wording and continue to advertise. Such arrangements are sent to contractors via email on an almost weekly basis”.⁵² Keith Gordon told us that HMRC’s actions were clearly not yet effective “because otherwise you would not be able to find the adverts on Google today”.⁵³

⁴⁶ Q 7 (Glyn Fullelove, Chartered Institute of Taxation)

⁴⁷ Q 7 (Meredith McCammond, Low Incomes Tax Reform Group)

⁴⁸ Written evidence from Loan Charge Action Group ([LCF0002](#))

⁴⁹ Q 7 (Glyn Fullelove)

⁵⁰ Q 13 (Andrew Hubbard)

⁵¹ Q 7 (Meredith McCammond, Low Incomes Tax Reform Group)

⁵² Written evidence from Loan Charge Action Group ([LCF0002](#))

⁵³ Q 23 (Keith Gordon)



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Tackling unregulated umbrella companies

Some witnesses expressed concern that IR35 had resulted in a growing use of umbrella companies in employment supply chains, which may increase the number of taxpayers exposed to loan schemes. Andrew Chamberlain of IPSE told us:

“In 2017 the rules on IR35 in the public sector changed. That meant that there was an increased usage of umbrella companies. People who were contracting and being paid by their own limited companies now had to go into umbrella companies ... some of them would have been in these loan scheme arrangements. What worries us is that in April [2021], when the private sector [off-payroll working] rules come in, we will have the same problem ... thousands of people are going to be pushed into umbrella companies. They are not well regulated, and some of those people will unfortunately fall into the hands of these scheme promoters”.⁵⁴

Andrew Chamberlain added that people who are required by their engager to be paid through an umbrella company may choose the company that appears to offer them the largest amount of take-home pay, and that the scheme may use shares rather than a loan, giving false reassurance that it would not be challenged by HMRC as disguised remuneration. He expressed fear that a large number of taxpayers may be caught in disguised remuneration schemes as a result.⁵⁵

When asked about these risks, Mary Aiston from HMRC told us that “I do not think there is a link” between the off-payroll working rules and disguised remuneration.⁵⁶ Carol Bristow of HMRC added:

“We would say that the off-payroll rules do not in any way force people into using tax avoidance schemes... The reform due to be introduced in April 2021 does not so much introduce a new tax as move the responsibility for paying the existing tax and operating the off-payroll rules from the worker’s personal service company to their end-client agency or umbrella company who employs them. DR schemes, of course, seek to turn income into a loan to try to ensure that it is not taxed at all. The two things are separate”.⁵⁷

Responsibilities of large employers and agencies

We heard concerns that large employers were not sufficiently diligent in ensuring tax compliance within employment supply chains. For example, we were told that many employers who recruited workers through agencies had no scheme or standard for working with agencies who are certified as tax compliant. Meredith McCammond suggested that “agencies could do more due diligence on who they are asking workers to work through. We have to remember that, these days, agencies do not offer in-house PAYE. They have to ask workers to work through an umbrella company in order for them to get paid, so agencies need to take more responsibility when it comes to whom they are asking workers to work through”.⁵⁸

⁵⁴ Q 27 (Andrew Chamberlain, IPSE)

⁵⁵ *Ibid.*

⁵⁶ Q 37 (Mary Aiston, HMRC)

⁵⁷ Q 37 (Carol Bristow, HMRC)

⁵⁸ Q 9 (Meredith McCammond, Low Incomes Tax Reform Group)



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Particular concern was expressed about the use of disguised remuneration schemes by workers engaged by employers in the public sector, particularly in relation to the targeting of workers in the NHS.

The Independent Health Professionals Association told us that “there is no specific ‘targeting’ of COVID19 returnees *per se*. Rather, all freelance healthcare workers are being targeted, this includes returnees but isn’t especially directed at them ... most temporary healthcare workers will know people who have had someone try to sell them such a scheme, indeed most have probably have been on the receiving end of a pitch themselves. Worse, promoters incentivise people to recruit their well-meaning colleagues – who are often incentivised with bonuses to recruit their co-workers”.⁵⁹ Glyn Fullelove told us that “the NHS has no scheme whereby it will work only with agency suppliers that have some kind of certification for properly deducting PAYE and NIC and that are not involved in these schemes”.⁶⁰

HMRC’s use of suppliers involved in disguised remuneration schemes

Relatedly, we were told by the Loan Charge Action Group that, following Freedom of Information requests, it had been confirmed that HMRC themselves had in the past used contractors who were using disguised remuneration schemes, “which is clearly (and highly) embarrassing to them”.⁶¹ Keith Gordon told us that, when HMRC was asked this question, “the response was, ‘we don’t pay people in loans’. That was not the question asked, yet it is clear that in 2019 it was still engaging people who were using these arrangements”.⁶²

Mary Aiston of HMRC told us that, “there were 15 occasions that we have identified where somebody who was a contractor doing work for HMRC was also at the same time using a disguised remuneration case ... of those 15 people, five had already stopped and we took immediate action to end the contracts of the other 10, so they were no longer working with us. We will continue to run those checks”. She also told us that: “We are clear with the agencies that we work with that they need to meet the certain standard... if we found that the agency was not, then that is something we would take very seriously”.⁶³

Liability for schemes

Witnesses expressed concern that there was no direct liability for unpaid taxes for promoters of tax avoidance schemes. Meredith McCammond said that: “The only thing that can stop promoters is if HMRC gets behind limited liability and finds a way of pinning the promoters either with the penalties or with the PAYE their associated entities have avoided. Pinning those personally on the directors is the only way to stop the promoters”.⁶⁴

The Loan Charge Action Group supported a change in the law to make promoters directly liable, and also said that the selling of tax avoidance schemes that later fail should be made a criminal offence.⁶⁵

⁵⁹ Written Evidence from Independent Health Professionals Association ([LCF0006](#))

⁶⁰ [Q 9](#) (Glyn Fullelove)

⁶¹ Written evidence from Loan Charge Action Group ([LCF0002](#))

⁶² [Q 20](#) (Keith Gordon)

⁶³ [Q 35](#) (Mary Aiston, HMRC)

⁶⁴ [Q 7](#) (Meredith McCammond)

⁶⁵ Written evidence from Loan Charge Action Group ([LCF0002](#))



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Conclusions and recommendations

The evidence we heard shows that some progress has been made in improving management of the Loan Charge and in tackling promoters, but there remain shortcomings in the way HMRC is implementing the Government's response to the Morse Review - and, related to this, abiding by the HMRC's own Charter. More needs to be done by HMRC to ensure that outstanding cases are resolved and – although we welcome recent announcements – the remaining promoters are targeted.

Conclusions

Our key conclusions are:

The Loan Charge

1. **The commitments of HMRC are all too often not reflected in what taxpayers experience with regard to the Loan Charge. Too many cases we heard raise the question of whether HMRC is following the spirit as well as the letter of its Charter, as well as the recommendations of the Morse Review, in its actions.**
2. **It is encouraging that HMRC appears to recognise the different characteristics of those lower-income taxpayers who became caught up in disguised remuneration schemes without being aware of the risks, but HMRC needs to do more to take account of their specific circumstances in its dealings with them.**
3. **There have been challenges in implementing some aspects of the Morse Review recommendations. We understand how desirable it is to resolve issues as soon as possible, but the time allowed for taxpayers to take advantage of concessions has proved insufficient, and HMRC has made processes for claiming them too complex. For example, no refunds of voluntary restitution payments have yet been made; few people took up the opportunity to elect to spread Loan Charge payments; and 'reasonable disclosure' is being applied very strictly, in a way which some witnesses deem unfair.**
4. **In any event, it is difficult to see how there can be early resolution of Loan Charge cases while HMRC pursues enquiries initiated many years ago and which were effectively stalled in the interim. These include cases relating to disguised remuneration schemes excluded from the Loan Charge following the Government's acceptance of the recommendations made in the Morse Review.**

Tackling promoters and the use of tax avoidance schemes

5. **There is no question that tax avoiders should be targeted by HMRC, but there remains insufficient focus on promoters of disguised remuneration schemes. More also needs to be done to ensure that those – such as large employers and agencies – who could do more to ensure tax compliance and prevent the use of such schemes do so.**
6. **There should be an emphasis on symmetry of treatment between taxpayers and promoters. The Government should continue to consider what action it can take against promoters to stop them selling these types of scheme, including considering whether – and how – promoters could be made directly**



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liable for unpaid tax arising from such schemes. The Government is taking retroactive measures against the users of such schemes; the same approach should apply to those who promoted and sold these schemes.

7. We welcome that HMRC is doing more to tackle schemes at source, including the marketing of these types of scheme through its work with the Advertising Standards Authority. It is important that more is done to reduce the exposure of taxpayers to such schemes in the first place. There should also be a renewed focus on ensuring consumer protection and preventing the mis-selling of schemes.
8. It is surprising that large employers and agencies, including those in the public sector, are not subject to clear protocols on contractors' use of disguised remuneration schemes, leaving employees at risk of being caught up in them.
9. HMRC should practice what it preaches and take further steps to avoid using employment agencies and contractors that use disguised remuneration or other tax avoidance schemes.
10. In addition, HMRC should, as a priority, work with other relevant Government departments and industry bodies, with a view to introducing regulation for umbrella companies.
11. We continue to believe that Government takes too limited a view of the issues raised by increasing self-employment, with a focus on revenue generation and not on the wider issues raised in the Taylor Review.

Recommendations

Our recommendations are:

The Loan Charge and tackling promoters of tax avoidance schemes

1. The Government should look again at the definition of reasonable disclosure. The current test is too narrow; instead, it should reflect what would have been deemed reasonable at the time of disclosure. In particular, the definition should be amended to reflect the spirit of the Morse Review, increasing the number of taxpayers who are accepted as having made reasonable disclosure (and so fall outside the scope of the Loan Charge). This change should be made retrospective to the date that the relevant provisions of the Finance Act 2020 took effect, so that those cases already considered and rejected under the current 'reasonable disclosure' interpretation are all subject to review.
2. HMRC must be transparent about the principles it applies in settling individual cases, to address the evidence we heard on the inconsistency with which it applies the Loan Charge to different taxpayers.
3. HMRC should extend the time available for taxpayers to elect to spread payments. We do not believe that the extension to 31 December 2020 was adequate. The tax system normally allows a two-year period for taxpayers to decide to make elections. We therefore believe there should be a further extension to 31 December 2021, and that this should be a matter of entitlement rather than HMRC discretion.



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4. **HMRC** should reform the administration of payment spreading, reflecting concerns over the inability to negotiate time-to-pay arrangements where an election to spread payments has been made.
5. There should be reform of the process for refunding voluntary restitution payments. The process seems to be too complicated, both in the claims process and the arbitrary time limits. **HMRC** should be clearer about the process for obtaining refunds of voluntary restitution payments, and should more generally improve communications and seek to reduce complexity – for example, by providing pre-populated claim forms. The Government should also extend the time allowed to claim a refund to 31 December 2021.
6. For pre-December 2010 schemes, **HMRC** should clarify its intended approach to ongoing enquiries. In particular, **HMRC** should commit publicly to reviewing the status of all open enquiries for years before 2010-11, and to taking appropriate action to close them within a specific – and short – time limit. The time and complexity involved in dealing with historic cases is a drain on resources and damages trust with taxpayers.
7. In the spirit of the Morse Review, we would encourage **HMRC** to consider closing down open enquiries for years before 2010-11 without further action, for the same reasons the Morse Review recommended their being removed from the scope of the Loan Charge. These enquiries are 10 to 20 years old, facts may now be difficult to establish, and **HMRC** has accepted that in many cases there was inadequate communication with taxpayers. Closing these enquiries would not only release resources to hasten the resolution of Loan Charge issues, but also allow **HMRC** to move on to dealing with what should now be its main job of focusing on the newer schemes that continue to proliferate.
8. **HMRC** should communicate directly with taxpayers whom it has identified would benefit from the concessions made following the Morse Review, but have not claimed them, to ensure as far as possible that no-one misses out on the changes that are intended to benefit them.
9. The Government should move quickly to find a solution for taxpayers who are being asked to repay loans on which they have already paid tax. One possibility would be to legislate that, where loans have been repaid, tax paid in respect of them – whether under the Loan Charge or the terms of a settlement – should be refunded.
10. We welcome the Government's plans to take further action against promoters of tax avoidance schemes. This positive intent is to be applauded, and we await tangible and positive results as its new measures are implemented.
11. We would welcome clarification of the appointment process for advisers to the Morse Review, following concerns we heard about its independence.

General recommendations for HMRC

12. **HMRC** should ensure there is a balance of priorities between recovering missing tax and treating taxpayers fairly. It is not always obvious that the latter is a priority, even after the changes that followed the Morse Review. **HMRC**



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must do more to ensure its actions cover both the spirit and the letter of its Charter.

13. **HMRC** should review how it conducts enquiries which can only be resolved by legislation or litigation. We need reassurance that lessons have been learned from problems with the management of the Loan Charge.
14. **HMRC** should review the deployment of its resources. It is clear that counter-avoidance has been generously resourced in recent years but it is not clear that equivalent funding is going elsewhere within **HMRC**, in particular to those areas dealing with practical matters once schemes have been defeated, such as administration and debt collection.
15. **HMRC** must continually review its suppliers to ensure that none are themselves using aggressive tax avoidance vehicles.
16. There needs to be a wider focus on the issues raised by rising self-employment in the Taylor Review. These issues go much wider than that of tax liability, and an excessive focus on this issue risks creating further distortions, for example in the treatment of self-employed workers.

Thank you very much again for your cooperation with the Sub-Committee's work in recent months. We look forward to your response to our conclusions and recommendations.

Yours,

George

The Lord Bridges of Headley

Chair, Finance Bill Sub-Committee