



Sammy Wilson MP
House of Commons
Westminster
SW1A 0AA

17th September 2021

Dear Sammy,

Unacceptable and misleading answer to your Parliamentary Question 7th September 2021

First of all, thank you very much for continuing to challenge the Treasury regarding the Loan Charge and for asking an oral Treasury Question on 7th September 2021

Unfortunately, and predictably, the answers that you were given from the Minister responsible, Jesse Norman, did not accurately or honestly deal with the important issues you raised, so we are writing to expose the way that yet again MPs are being misled over the Loan Charge.

You raised with the Minister the following points:

“It is not enough for the Minister to say that people had to take responsibility for their own tax affairs when the information that they were given by HMRC was that there was nothing wrong with these schemes initially, when HMRC passed and signed off tax years for people, and when the head of HMRC has admitted that, in recent months, he had repeatedly tried—this was the outcome of a freedom of information request—to obtain legal analysis to understand the strength of a claim with “very little success”. There is not even a legal standing for this. How then can the Minister say that it is right to pursue people for things that they were led into, and, indeed, for payments that HMRC was regularising by allowing contractors to use as a means of paying their employees?”

Taking each of your important points in turn and the responses from, Jesse Norman:

1. HMRC’s own use of contractors using schemes.

You raised the fact HMRC themselves used workers who were being paid whilst using so-called disguised remuneration schemes, something you and the APPG are well aware of and the subject of the damning APPG report.

Jesse Norman responded on this point:

“There were some contractors working through agencies for HMRC. Where it was discovered that they had used disguised remuneration, those relationships were ended and strong

measures have been put in place to prevent recurrence. That is an unfortunate feature of the extended way in which these contract arrangements sometimes work.

Jesse Norman admits that HMRC did engage and use contractors that used schemes whilst working for HMRC, though he seeks to give the impression that HMRC somehow couldn't know about this, which is simply false – *they were of course, as you say, signing off these people's tax returns!*

Mr Norman conveniently ignores this key point. HMRC were indeed signing off tens of thousands of people's tax returns some of whom were using these arrangements and, in many cases, HMRC raised no issues, in some cases they actually refunded tax! It is typical of Jesse Norman and HMRC to try to give the false impression that the use of these schemes was not known to them, when it of course was – and they failed to act, meaning people continued to use them and advisers continued to recommend them.

Whilst the Treasury and HMRC may claim that HMRC didn't know, in internal emails HMRC admit they DID know about these arrangements, which is entirely contrary to the impression given by Jesse Norman's answer. HMRC, as tax authority, clearly did know, even if their colleagues who hired them failed to ask. The lack of joined up working on this is clearly stated by Director of Counter Avoidance, Mary Aiston, in an internal email sent on 10th January 2019, 11:45 and exposed via [FOI requests](#):

For TSC we will need to strengthen our lines on HMRC's own involvement in relation to disguised remuneration. We can clearly state that HMRC has never used a DR scheme but **we need stronger lines on the checks HMRC makes before we hire contractors – Finance colleagues have tended to see this as a problem for CA [Counter Avoidance] and policy colleagues to resolve which has caused us some issues.**

In [another FOI](#), it is clear that HMRC (acting as tax authority) were able to then tell HMRC as engager!

This is in an email from an HMRC officer (name redacted) in the CFO (Chief Finance Officer) Group on behalf Justin Holliday (Chief Finance Officer and Tax Assurance Commissioner), sent on 28th November 2019, 13:18

You will be aware that **HMRC as engager has been alerted by HMRC as Tax Authority that a number of current contractors in HMRC and RCDTS are or appear to be current users of DR schemes.**

Also other [FOI responses](#) reveal that in preparing public responses to FOI requests, **HMRC deleted references to them being engager**, to try to cover up the fact that whilst those in HMRC who engaged contractors may have failed to discover that contractors were using schemes, whilst knowing that HMRC as tax authority *would* know this.

However, as Ruth acknowledged in her letter, HMRC acknowledges that as they are not privy to these details arrangements between suppliers and their contractors, it is possible that a contractor may might have used utilise an disguised remuneration (DR) tax avoidance scheme without the HMRC's knowledge of their engager. If HMRC discovered that a contractor had done so, in breach of our "Compliance with Tax Legislation" clauses, our policy would be to remove them from the department and deal with their tax affairs in the same way as any taxpayer who had used such a scheme.

It may help if I explain that, to inform the letter from HMRC to the House of Lords Economic Affairs Committee, analysis of the contractor records held was completed. In accordance with departmental retention policy, and in preparation forte ensuring compliance with the 2017 reforms to the off-payroll working rules, HMRC only held a complete central record of departmental contractor engagements from 2016. The analysis involved clashing the details of individual contractors against the list of known users of DR schemes. The result of this analysis would show whether a contractor had been engaged whilst using used a DR scheme without the knowledge of their engager.

The initial drafting states "It is possible that a contractor may utilise an avoidance scheme without the knowledge of their engager". This was then changed to saying simply "without HMRC's knowledge", which is not actually true - engaging staff in HMRC may not have known (even if they should have done), but HMRC as tax authority signing off tax returns will have known! This is a subtle change, but a very deliberate and simple one, to give the false impression that HMRC didn't and couldn't know about contractors using schemes, when of course as an organisation, they did.

In addition, this section has also been changed:

HMRC as an employer is an engager of professional services and contingent labour. As a contracting authority, the majority of HMRC's contracts are for contingent labour via an agency, and we use the Crown Commercial Service's framework contracts for this. These contractors form a flexible complement to our workforce, sourced through an employment agency, who are directly managed by HMRC but paid through an agency.

With contingent labour there is always at least one agency between HMRC and the

Commented [HJ(1)]: What precisely does this mean? t implies that we have a line management relationship with these people but pay them through an agency. Please clarify.

Here the phrase "HMRC as an employer is an engager of professional services and contingent labour. As a contracting authority..." was deleted, because it was too honest in explaining that HMRC did engage contractors and implies responsibility for their contractors, something HMRC have desperately sought to deny, to cover up the hugely embarrassing fact that many contractors worked for them whilst using the very schemes they claim they "were always clear" do not work".

Mr Norman also stated that they were removed from their employment once their unfortunate position had been identified – yet in reality, this was long after the Loan Charge deadline of April 2019. Plus, the fact that this was happening in the first place has been entirely overlooked. Anyone working directly or indirectly for HMRC should have been checked and approved via their supplier to HMRC in accordance with their suppliers own statutory regulations and this has clearly NOT been done. This should, result in penalties to these suppliers but to date, nothing has happened with any of these suppliers, instead the responsibility has been firmly deposited on the worker. Why have HMRC's own suppliers not been fired for providing workers using schemes HMRC claim they were clear were unacceptable?

The most fundamental point is the one you yourself make Sammy - how can the law have been clear if it wasn't clear to those workers who were working for HMRC? If it was not clear to them it would not have been any clearer to any other worker for any other company across the country.

2. HMRC tried and failed to find legal precedent for them being permitted to pursue individuals, rather than employers.

As raised in your question Sammy, First Permanent Secretary and Chief Executive of HMRC Jim Harra admitted [in an internal email to senior colleagues](#) dated 31 January 2019 *“In recent months I have repeatedly tried to obtain legal analysis to understand the strength of our claim with very little success”*.

Jesse Norman replied on this:

“The right hon. Gentleman will be aware that the chief executive of HMRC has specifically written to the loan charge and taxpayer fairness all-party parliamentary group to make it perfectly clear that it has taken those remarks out of context and that what he was doing—as every chief executive of a public agency should do—was putting his own officials under some pressure to provide the justification needed, and rightly so.”

This is a cynical attempt to confuse and deflect the reality of what Mr Harra said and what he admitted. The context of the emails are actually quite clear – that senior HMRC officials were looking for legal precedent that justifies HMRC pursue individuals. Mr Harra had been seeking this (and no doubt asking officials to do so) but to try to deny the reality of what he said and what it meant is disgraceful.

There can therefore be no doubt from the emails and the context of the emails, that the head of HMRC admitted privately that HMRC could not find a legal precedent to pursue individuals rather than employers. This admission casts serious doubt on the legal basis for the Loan Charge.

Jesse Norman also claimed in his answer that, Mr Harra “was putting his own officials under some pressure to provide the justification needed, and rightly so”, yet Mr Norman omitted to say if any justification has been discovered – and it is clear that no such justification has been found!

During a recent Loan Charge follow-up oral evidence session on 15th July 2021 with the Lords Economic Affairs Committee, where Jim Harra and Mary Aiston appeared as witnesses for HMRC, four members of the Committee all asked questions which related (directly or indirectly) to the same email from Mr Harra, that you quoted. They were unable to mention any legal case or any other evidence to help persuade the Committee of the 'strength of their claim', despite being pressed on the matter.

It is not only clear what Mr Harra stated – HMRC tried and failed to find legal precedent for them being permitted to pursue individuals, rather than employers – but it is also apparent that there is no such precedent which is contrary to the impression Jesse Norman and HMRC are seeking to give in a pathetic attempt to deny the reality of what Mr Harra clearly admitted.

3. The fact that HMRC were consulted by some individuals over the proposed use of schemes and did not tell people not to use them.

In his reply, Jesse Norman stated:

“I do not think that there is any evidence that HMRC has signed off or positively approved the use of any disguised remuneration scheme. If the right hon. Gentleman has an example, he is welcome to send it to me.”

First of all, as above, as HMRC well know, HMRC signed off thousands of people’s tax returns – and in many thousands of cases, they signed off those returns as fine and did not open any enquiries, nor tell these taxpayers that there was anything wrong with the arrangements they were using. Individuals would of course regard that as this showing that HMRC did not have a problem with their tax affairs (hence the shock of being hit with retrospective tax bills years later).

However, as well as this fact, there are also cases where individuals actually approached HMRC and asked if the arrangements were okay to use.

One such example was a self-employed pilot, *who HMRC agreed, had no choice but to use the arrangements being proposed by his professional advisers*. He states in the evidence (also sent to the Loan Charge and Taxpayer Fairness APPG):

“Please note, when I began zero hour contracting I was told by two separate tax professionals that the current models for self employment do not fit and that I should seek HMRC’s help, which I did. They told me the loan scheme I was about to enter was legal, they agreed I DID NOT have a legal alternative.

HMRC state that the individual is responsible for their own taxation, as an individual I cannot do more than seek the advice of 2 independent tax professionals and HMRC themselves, I simply cannot do more.”

This is proof that HMRC were asked directly by some people if they could and should use schemes and not only failed to warn them not to use them, but in this case agreed they had no alternative.

This is yet more evidence that shows how grossly unfair the Loan Charge is. The oft repeated line from Jesse Norman that people deserve what they get because “individuals are responsible for their own tax affairs” is simply not reasonable and no justification for the unfair situation people have been placed in, even facing ruin where they consulted with HMRC. It is clear from FOI responses that the usual pre-prepared lines and excuses do not reflect or address the reality of the Loan Charge.

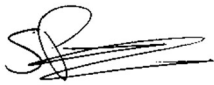
We hope that this letter is helpful in showing how, once again, Jesse Norman sought to both deflect justified criticism and to mislead over the Loan Charge. Unfortunately, this is routinely typical and typifies the way that both HMRC and the Treasury have consistently misled MPs and peers over the Loan Charge, something that both the Loan Charge Action Group and the Loan Charge and Taxpayer Fairness APPG have continuously raised. This campaign of disinformation continues to give a false picture of the Loan Charge, its reality and its impact, and is preventing HMRC being held answerable or accountable for their continued inaction, mismanagement and failures.

We note that since you asked your question, Jesse Norman has been sacked by the Prime Minister. Considering the way that has dealt with the Loan Charge issue, has consistently given partial and misleading answers and has actually sneered at questions about suicides, it won't surprise you to know that Loan Charge victims warmly welcome the Prime Minister's decision to sack him. We now hope that the Treasury will show some humanity and compassion and look at the Loan Charge again.

We thank you once again for asking these important questions and for continuing to challenge HMRC and the Treasury over the Loan Charge, demanding that their answers are honest and complete, providing supporting evidence where necessary, all of which are regrettably conspicuous by their continued absence.

Thank you again and best wishes,

Yours sincerely



Steve Packham
Spokesman & Executive Director



Andrew Earnshaw
Executive Director

On behalf of the Loan Charge Action Group