

24th May 2019

Dr Paul Williams MP
Christine Jardine MP
Mr Ivan Lewis MP
Rt Hon Justine Greening MP
Julia Lopez MP
Joseph Johnson MP
Mr Jim Cunningham MP
Mr Laurence Robertson MP
Ross Thomson MP
Peter Dowd MP
Anna Turley MP

Dear MPs

Treasury Questions, 21st May 2019 – misleading answers from the Minister

First all, on behalf of the thousands of individuals and families facing ruin due to the draconian Loan Charge, can we thank you for asking a question about it in Treasury Questions.

A remarkable ELEVEN MPs raised the Loan Charge, challenging the Treasury on this controversial policy. Each one of you, from all sides of the House, attacked the Loan Charge or the Government's handling of it.

However in response, the then Financial Secretary to the Treasury, Rt.Hon. Mel Stride, has again given partial and misleading answers and, in some cases, said things that are not true. There is a history of such behaviour from Rt.Hon. Mel Stride, so we are writing to you to expose this, as the then Minister's answers are part of a cynical campaign of disinformation over the Loan Charge. We recently had to write to Rupa Huq MP as Rt.Hon. Mr Stride had given a misleading answer to her at the previous Treasury Questions.

We would like to publicly thank you all for questioning the Treasury during this session, alongside the more than two hundred other MPs that support a change to the Loan Charge legislation.

We would like to take the opportunity in this open letter to highlight some of the responses given by the then Junior Minister and in turn provide accurate information into the truth of the matters:

Mel Stride's Response to Paul Williams, Christine Jardine and Ivan Lewis

"Disguised remuneration is an aggressive and contrived form of tax avoidance that involves a loan, which there is never any intention of repaying".

LCAG Response 1

This is simply not true. Tax avoidance was not the principle driver for people entering such arrangements. When the IR35 legislation was introduced in 1999 it created panic in the freelance community. It threatened large tax bills if the

parameters of this very complex legislation were not met. People were told to get professional advice and they did so. Many were offered schemes which were marketed as a safe and tax compliant solution to the IR35 problem.

Many people were pushed into these schemes by employers and contracting organisations, many had no choice but to take up these arrangements to earn their living. Some employers actually forced people to end employment and take up off payroll self-employment using specified arrangements, which suited the employer more.

Mel Stride's Response to Paul Williams, Christine Jardine and Ivan Lewis

"Her Majesty's Revenue and Customs takes a measured, proportionate and sympathetic approach to the collection of this tax".

LCAG Response 2

We have evidence that HMRC are anything but sympathetic in their approach to the Loan Charge. People are being chased for settlement well in advance of HMRC's own August 2019 deadline, along with being asked to take out finance and remortgage their homes to pay what HMRC claim is owed. We have seen examples of people being asked to pay £9,000 per month over the next few years, despite the individual not currently having an income!

The settlement agreements require individuals to agree to many unpalatable, and likely unlawful, terms including admitting the wrong doing where there has none been proven, agreeing not to make a claim should the contract be found unlawful and removal of other legal rights as part of Time To Pay contracts.

Interest is being charged on settlements, at more than a commercial rate. External debt agencies are being used for collection, meaning that HMRC's claims of not making people lose their homes or be made bankrupt are false as they have simply outsourced the collection process.

As has been reported, evidence proving three suicides of people facing the Loan Charge has been sent to the Loan Charge APPG.

Mel Stride's Response to Paul Williams

"I refute the suggestion that anybody is forced into making a tax-avoidance arrangement. If something looks too good to be true, it generally means that it is just that".

LCAG Response 3

This is in response to Dr Williams stating that one of his constituents had to work through a loan arrangement in order to be able to work. Rt.Hon. Mel Stride has effectively accused this MP and his constituent of lying. The Loan Charge APPG report also includes numerous testimonies where people state they were given no choice than to work in this manner.

Rt.Hon. Mel Stride is rolling out one his usual soundbites that is unrelated to the MP's question. It is well documented that these arrangements did not appear "too good to be true"; the promoters took fees, often around 20% of the contractor's rate, to pay any tax due and to cover their costs in promoting the scheme. This rate of return is similar to what a contractor could achieve via a Limited company, and for the lower paid the fees may even be more than any tax which would be due. There was generally little or no financial benefit to the contractor in using such arrangements.

Mel Stride's Response to Paul Williams

"Of the settlements to date, which have been worth more than £1 billion, some 85% have been from employers, not employees, and we are actively pursuing the promoters of these schemes"

LCAG Response 4

HMRC have so far refused to answer how much of the stated £1 billion tax recovered so far has come from the likes of JP Morgan Chase – this is the tax that would have been due even without the Loan Charge legislation, and furthermore the request for the tax paid is likely to have been passed onto the employees from the employers.

This 85% figure will also include individuals working through their own Personal Service Companies, i.e. where the individual is both the employer and employee.

There is no evidence of HMRC chasing any loan arrangement promoters. His recent references to a tribunal cases were solely related to declaration under DOTAS rules, giving details of participants, rather than chasing any tax due from the promoters.

Mel Stride's Response to Christine Jardine

"The loan charge is not retrospective. There has never been a time in the history of our country when the arrangements that I described a moment ago were ever compliant with our tax code".

LCAG Response 5

It should be noted that the question to which this response refers to, includes a comment on suicides caused by the Loan Charge. Again, Rt.Hon. Mel Stride refuses to even acknowledge that this policy is the cause of a number of suicides.

It took HMRC until 2017 to finalise the tax position of such arrangements – even then tax was said to be due when money was placed into the Trust. At no time in history has a loan been taxable as income, so the 2019 Loan Charge is clearly retroactive and retrospective.

The Loan Charge changes the tax position of past years, back to 1999, and demands tax that HMRC would not otherwise be able to collect. It reopens 'closed years' including instances where HMRC had opened tax inquiries and subsequently closed them saying no further tax was due. Clear retrospection.

The Loan Charge legislation bypasses established taxpayer protections, undermining the tax system and the rule of law. ^[1]Using existing powers, HMRC could have opened inquiries into loan arrangements, but failed to do so. Likewise, they could have launched legal cases to prove tax was due, but they did not. **The Government introduced the retrospective Loan Charge to enable them to go back and demand tax (with no right of appeal) when they failed to pursue it at the time.**

HMRC and HMT claim the Loan Charge is, "a new charge on outstanding loan balances". This is a contrived way of saying, "we have created a new legislation that allows us to go back and ^[1]tax perfectly legal loan transactions since 1999 because we failed to change the law to prohibit these loan transactions".

Lord Forsyth, Chair of the House of Lords Economic Affairs Committee, concluded that, "The charge is retrospective in its effect, claiming tax from years which should be closed to enquiry".

Mel Stride's Response to Ivan Lewis

"If we include the loans, the average earnings of those who have been involved in this egregious tax avoidance is twice our country's national average wage".

LCAG Response 6

The Minister is seeking to deflect from the main point raised here, using the politics of envy. The amounts earned by individuals in the past and the sums demanded by HMRC now are an irrelevant distraction. HMRC have a duty to treat all tax paying individuals fairly and equally, collecting only the tax that is due.

Mr Stride also seeks to deflect from the question in his response by patronising the House with yet another explanation of how loan arrangements may have operated.

As Ivan and Jim Cunningham both made clear, the list of people facing the loan charge includes lower paid workers, including key public sector workers, such as nurses and social workers.

Mel Stride's Response to Julia Lopez

"I have made it very clear, as have the Government, over a long period of time—at least since 2016 when these measures were first brought into effect, which is before I arrived in my current position—that our policy is our policy and that we will not change that policy".

LCAG Response 7

The Treasury is just showing belligerence in their response here. "Our policy is our policy" shows that the Treasury are not listening to concerns that have been raised, regardless of the consequences of that policy. It should also be noted that the will of both Houses of Parliament is against the Loan Charge.

This is an admission by Rt.Hon. Mel Stride that that Loan Charge only came into effect in 2016 (Royal assent was actually in 2017) which further highlights that the policy is indeed retrospective.

The Treasury have also stated that people have had a long period to arrange their affairs in regards to their loans; if 3 years is a long period of time then 20 years is an exceptionally long time.

Mel Stride's Response to Jo Johnson

"IR35 is often raised in the context of the loan charge, but it is a completely unrelated matter".

LCAG Response 8

By stating that loan arrangements and IR35 are unrelated, Rt.Hon. Mel Stride is either poorly informed or misleading. The main reason people entered these arrangements was due to the chaos and confusion of the badly designed IR35 tax legislation which saw the risk of additional tax liabilities (Employers NI) landing on the freelancer/outsourcer, rather than the end client, whose tax bill would therefore increase far above that of any 'normal employee'. This is extensively covered in Section 2 of the Loan Charge APPG report.

The IR35 off-payroll rollout to the public sector in 2017 led to a multitude of NHS staff being misled or even forced into these schemes.

Even HMRC find it difficult to interpret IR35 correctly, which has resulted in HMRC losing 11 out of 12 IR35 cases since April 2010 (a success rate of just 8%). If HMRC is unable to understand its own legislation is it any wonder that contractors would seek solutions that provide IR35 certainty?

Mel Stride's Response to Jim Cunningham

"HMRC has a duty to be proportionate and to make sure that appropriate arrangements are in place".

LCAG Response 9

Extended time to pay arrangements do not answer the question of whether the Loan Charge is right, just or lawful. They also carry a greater than commercial rate of interest, and in any case extended time to pay is only applicable on a settlement process, mentioned above in LCAG Response 2, not on the payment of the Loan Charge

Living the rest of their lives in penury and their family having no inheritance is no way to treat the honest hardworking people caught up in all this.

Mel Stride's Response to Laurence Robertson

"As to why tax may not have been paid at the time that it was due, there are a multitude of reasons for that not least of which is the fact that many taxpayers simply do not volunteer the correct information or they claim that their scheme works when clearly it does not".

LCAG Response 10

Rt.Hon. Mel Stride is claiming that the Loan Charge is required as people have fraudulently submitted tax returns; omitting all required information. If this were the case, HMRC would be able to reclaim tax alleged to be due using their existing powers. There is no evidence that anyone impacted by the Loan Charge is being pursued by HMRC for errors or omissions on previous years' tax returns. Many participants were advised by their accountants, who completed and submitted their tax returns on their behalf, in full knowledge of any arrangements.

There is no suggestion that all required information was not submitted at the time – individuals' tax returns included such things as DOTAS scheme registration numbers and benefit in kind tax was paid on loans, where applicable.

The response also fails to highlight 20 years of HMRC inaction that has led to this situation.

The use of the term "found not to work" is meaningless. A loan arrangement has never been found to be unlawful in any court or tribunal.

Mel Stride's Response to Ross Thomson

"HMRC is not persecuting people, as my Hon. Friend suggests. It is collecting the tax that is due. It is also not pursuing people for criminal activities".

LCAG Response 11

This is the perhaps the fundamental piece of dishonesty at the heart of the Treasury and HMRC's propaganda in seeking to defend the loan charge (and cover up the chronic failure of HMRC which made them come up with it). The sums being sought by HMRC have never been legally proven to be owed, so it is a downright falsehood to say this is about collecting "the tax that is due".

Mr Stride knows full well that the whole point of the Loan Charge is to override taxpayer protections and allow HMRC to claim for tax that they never proved was due, often because they missed their legal right to raise any challenge! If HMRC believe that tax is due, then they need to do so through the tax tribunal system. Instead they've ripped up taxpayer protections and undermined the rule of law by introducing a charge that allows them to retrospectively impose tax that was not due at the time and has never been proven to be due!

The Loan Charge, as Sir Jon Thompson, the CEO of HMRC, has confirmed in a written letter to MPs, allows the threat of large penalties to be used to force settlement on tax which is not proven due **without the need for litigation**.

It needs to be very clearly highlighted here that Rt.Hon. Mel Stride agrees that no one currently impacted by the Loan Charge has been involved in any unlawful activity – this confirms the fact that loan arrangements are legal structures.

It should also be noted that the question to which Mr Stride is responding includes mention of the impact that the Loan Charge is having on individuals' mental health; the then Junior Minister has again ignored this in his reply.

Mel Stride's Response to Ross Thomson

"When it comes to criminality, I can tell the House that very recently, on 16 May, HMRC announced that six promoters of these schemes had been arrested on suspicion of loan charge tax fraud".

LCAG Response 12

The response regarding recent arrests is deliberately misleading and misrepresents of what has occurred. Those arrests are not for promoting loan arrangements now subject to the Loan Charge, and there is currently no evidence of any of these people have actually been charged with any offences. They appear, with the information we have so far, to be related to an attempt to defraud victims of the Loan Charge by selling a non-existent solution.

Mel Stride's Response to Peter Dowd

"We are actively pursuing 100 promoters of tax avoidance schemes, including those relating to the loan charge, and have brought in up to £1 million fines for promoters engaged in this activity".

LCAG Response 13

So far HMRC have refused to give any evidence of this. The question still remains as to where the line is drawn between "tax planning" and "tax avoidance". The most senior law Lord in House of Lords, Lord Judge, who is former counsel to the Inland Revenue, made clear that it's not up to HMRC. It's up to the courts, yet HMRC seem to be fearful of presenting their case in front of the courts.

The remainder of Mr Stride's response is disingenuous. No promoters of loan arrangements are known to be under investigation and £1 million fines relate to DOTAS disclosure only rather than the specific operation of such arrangements.

Mel Stride's Response to Anna Turley

"We are simply making sure that the tax that was always due is paid, and that is right and proper. As I have set out, we are taking a front-footed approach to clamping down on promoters".

LCAG Response 14

Once again, the fundamental lie: that this is about tax that was always due. As above, this is not true and Treasury and HMRC know that saying this is false. The only possible conclusion therefore is that Mr Stride has misled the House of Commons.

A tax on loans has never been due, hence HMRC have conceived retrospective legislation that bypasses the rule of law, and removes any rights of appeal. Tax may have been due when payments were made into a trust, but that would be a failure of the promoter to pay that tax – and a further failure of HMRC to collect that tax.

If HMRC and the Treasury were taking a "front-footed approach" they would have acted decisively 20 years ago by amending or improving existing legislation prospectively and informing individuals that they may claim additional tax at a later date.

Conclusion

We thank you again for asking these questions, challenging the Treasury and standing up for constituents facing the draconian Loan Charge. We trust that the above information is useful to anyone who requires it and lays out a truthful representation of the situation regarding the Loan Charge.

You can read more about the shocking campaign of misinformation here <https://www.hmrclloancharge.info/the-loan-charge-propaganda-scandal/>.

We hope that you will now lobby Jesse Norman, Mel Stride's replacement in the Treasury and urge him to end the cynical campaign of misinformation over the loan charge, which is bringing the Treasury and HMRC into disrepute.

We hope that knowing that it is the clear will of the House of Commons, Mr Norman will do what his predecessor has stubbornly failed to do and to listen to MPs and the evidence about the Loan Charge and announce a suspension and a much-needed independent review.

Please do keep challenging the misinformation and let us know if we can assist in any way.

Yours sincerely

Loan Charge Action Group