



4<sup>th</sup> July 2019

Rt Hon Sir Oliver Heald MP  
Jamie Stone MP  
Rt Hon Justine Greening MP  
Rt Hon David Davis MP  
Nic Dakin MP

### **Re: Oral Questions to the Treasury, 2<sup>nd</sup> July 2019**

On Tuesday 2<sup>nd</sup> July 2019, you all asked a question of the Treasury during Oral Questions in the House of Commons.

We would like to publicly thank you for questioning the Treasury during this session, along with the many hundred other MPs that support a change to the Loan Charge legislation.

Despite a new Minister being in place at the Treasury, Jesse Norman MP, the responses were alarmingly similar to the half-truths and misleading statements provided by his predecessor.

The Loan Charge is nothing more than HRMC's method of collecting tax it sees as due, with no legal basis and against the rule of law. We would like to take the opportunity in this open letter to highlight some of the responses given by the Junior Minister and provide accurate information into the truth of the matters:

#### **Jesse Norman's Response to Sir Oliver Heald and Jamie Stone**

In response to questions asked around estimates and assessments on the impact of the Loan Charge, Mr Norman responded: *"A tax information and impact note published in 2016 and a report on disguised remuneration published in March 2019 both considered the impacts"*

#### **LCAG Response 1**

Mr Norman is mistaken in that neither the 2016 impact note nor the March 2019 report considered the impacts of the Loan Charge.

Furthermore, the Minister does not even answer one of the questions tabled. In response to Sir Oliver's question, no promoters of arrangements now subject to the loan charge have been convicted of any criminal offences; not surprising as such arrangements are, and always have been, legal.

### Jesse Norman's Response to Sir Oliver Heald

*HMRC will continue to take firm action against those who promote tax avoidance schemes. As he will know, and I think has been made public, it currently has more than 100 promoters under civil inquiry. It is important to be clear that although there are no criminal offences of promoting or marketing tax avoidance schemes specifically, HMRC may conduct criminal investigations and make referrals to prosecuting authorities where, for example, there is evidence that promoters have deliberately misrepresented the facts to it.*

### LCAG Response 2

This is not a factually correct statement: HMRC have not taken any firm action so far. There is no public evidence that they have.

As has previously been said, no criminal investigations are underway relating to promoters of loan arrangements; to say otherwise is quite simply misleading.

### Jesse Norman's Response to Jamie Stone

*The hon. Gentleman is right that there is stress, but he should also be clear that a large number of people have been systematically using those means to avoid paying tax and the potential amount payable is more than £3 billion. He should be protective of the tax base more widely when he reflects on those matters. He is right that HMRC is taking careful steps to ensure that it protects and supports those who may be in genuine difficulty, and those who have other personal concerns can of course be referred to outside agencies.*

### LCAG Response 3

**It is also shameful that, as his predecessor did, Mr Norman completely ignores the mention in the House of Commons of known suicides of people facing the Loan Charge (including one that HMRC have referred themselves to the Independent Office of Police Conduct).** The tragic suicides have been raised in Parliament many times by numerous MPs, and the issue is not even acknowledged by Treasury Ministers.

Mr Norman's reference to the potential revenue to be collected seems to have put a price on the heads of those facing the loan charge. He is suggesting that Treasury's and HMRC's priority of maximising income is justified regardless of how many lives and livelihoods are destroyed. The quoting of the £3billion figure is also misleading. The amount that is being sought and collected from individuals from loan arrangements is a fraction of this figure, in the region of £0.8 billion, according to the Treasury's own estimates.

Where is the evidence that "*a large number of people have been systematically using those means to avoid paying tax*"? That assertion not backed up by the facts. The Loan Charge APPG report came to a very different conclusion. Namely, that tax avoidance was very rarely a contributory factor in people using these arrangements.

The Minister ignores published reports from both the House of Lords and the Loan Charge All Party Parliamentary Group, which cite grave concerns over HMRC's aggressive treatment of vulnerable individuals and the Loan Charge's impact on their

mental health. We recall the taking of a homeless man to FTT for late filing of tax returns. With regard to steps HMRC are taking, the reality from evidence of thousands of people is that HMRC are not ensuring people impacted by the Loan Charge are supported; those who have contacted HMRC asking for help have been told simply if they are suicidal to call the Samaritans.

Jesse Norman also failed to give any answer to BOTH questions Jamie Stone asked in his supplementary question: “Will the Minister confirm whether those people have had that training? Will a dedicated helpline be set up to help people who are under huge stress?” No answer was given on either point.

### **Jesse Norman’s Response to Justine Greening**

*I think that my right hon. Friend misstates the case. A disclosure of tax avoidance (DOTAS) number was associated with a large number of those cases. The people knew that they were in schemes that were potentially suspect. Every person is responsible for signing off their own tax return. I trust that my right hon. Friend will be reassured by the fact that recently six individuals were arrested on suspicion of promoting fraudulent loan charge arrangements. That speaks to a wider picture.*

### **LCAG Response 4**

On what basis does Ms Greening “misstate the case” and on what evidence is the Minister making this accusation? The facts are that loan arrangements now subject to the Loan Charge were sold by promoters as QC endorsed and HMRC approved. Mr Norman completely misrepresents how DOTAS registration, combined with HMRC’s failure to act within statutory time limits, was viewed as tacit approval for such arrangements.

Why would six arrests of individuals reassure Justine Greening when they have no bearing on her factual statement that people who were mis-sold arrangements are facing ruin?

In any case, Jesse Norman’s answer is false. The arrests were NOT for promoting fraudulent loan charge arrangements and are nothing to do with the promotion of arrangements subject to the loan charge; they were for allegedly promoting a supposedly fraudulent scheme for people seeking to avoid paying the Loan Charge.

The dishonest misrepresentation of these arrests was initiated by the previous Treasury Minister, Mel Stride, and now repeated by Jesse Norman. The Minister has misled the House of Commons, to give the entirely false impression that there have been any criminal arrests, charges or convictions of anyone for promoting arrangements now subject to the Loan Charge.

Finally, and following the trend, Jesse Norman ignored yet another question: he gave no response to whether it was time to take a fresh look at the Treasury’s approach to this situation.

### **Jesse Norman’s Response to David Davis**

*May I put on record my surprise that a former chairman of the Public Accounts Committee, with its concern for the public finances, should take that view? Some people may have been very adversely affected in mental health terms and we must*

*protect them at all times using all proper measures. HMRC is attempting to do that. However, there is a much larger number of people who are simply seeking to avoid paying tax due.*

### LCAG Response 5

It is extraordinary that, instead of answering a senior colleague's question about the impact on people's mental health, Jesse Norman attacks David Davis. The Minister spuriously claims that a former Chair of the Public Accounts Committee shouldn't be raising legitimate concerns about the documented devastating mental health impact of a Treasury policy.

Jesse Norman is suggesting with no evidence that there are far more people who are avoiding paying tax than are struggling with the mental health impact of the loan charge. This is an entirely made up statement – and a false one.

As is becoming the norm with Mr Norman's response, he also provides no answer to Mr Davis' question. Mr Davis has now asked **twice** what effect the Loan Charge is having on people's mental health and **twice** he has been ignored by the Minister.

### Jesse Norman's Response to Nic Dakin

*I remind the hon. Gentleman that there were other signs that indicated to people that they were in tax avoidance schemes—for example, a very low or relatively low effective rate of tax. The signs were there and people would have been right to pick up on them. Even if they were mis-sold, that does not have a bearing on the question of whether tax is now due.*

### LCAG Response 6

As with the previous reply to Justine Greening, Jesse Norman simply chose to ignore the facts (established from evidence) that people used loan arrangements due to taking professional advice and that some people did enter these arrangements as a condition of taking a new contract.

There is no evidence of apparent low effective rates of tax – users of these arrangements paid high fees to the promoters, with the assurance that this was to cover any tax due as well as the promoters' costs.

Despite Mr Norman's claims: tax is not due. This is part of the dishonesty that underpins the whole Loan Charge policy. The fact that loans are not taxable is clearly established in law, as confirmed by the Supreme Court in the Rangers case. HMRC were unable to prove that any tax was due on loans, hence their need to create a new retrospective law. HMRC could, and should, have used their existing powers to open enquiries within the statutory time limits to collect revenue had they been able to prove that tax was due.

Had HMRC opened enquiries, the taxpayer would have had their statutory right to defend themselves in Tribunal; something that the Loan Charge has taken away. But the reality is that HMRC could not prove tax was due on loans, failed to open enquiries within specified time limits and in other cases opened enquiries, then closed them as there were no issues to note.

The reality is that it has never been proven that tax is due. The whole point of the loan Charge is that it allows HMRC to slap a huge charge on money they would like to be able to tax but were not legally entitled to.

Jesse Norman shows no sympathy for people who have been mis-sold or badly advised. This is staggering and a notably more aggressive and unsympathetic approach than even his predecessor, Mel Stride. The Minister's position is essentially that however people ended up in loan arrangements, it's their own fault; for not realising that the Government might retrospectively legislate against them, it's their own fault; and the resulting catastrophic effect on their mental health and family life is their own fault.

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.

Yours sincerely

Steve Packham

LCAG Spokesperson & Executive Director