



The Rt Hon. the Lord Forsyth of Drumlean
Economic Affairs Committee
House of Lords
London
SW1A 0PW

14 January 2021

Dear Lord Forsyth,

Contradictory evidence from HMRC regarding advisers to the Morse Review

Thank you again to all members of your Committee for continuing to scrutinise the issues surrounding the Loan Charge.

We are writing regarding contradictory and questionable evidence given by HMRC regarding the choice of external advisers selected to advise the Morse Review. HMRC have not been consistent as to their reasons why advisers were chosen or not chosen to advise Sir Amyas Morse and it seems that, not for the first time, HMRC are not being accurate or honest in their testimony.

When giving evidence to the EAC Finance Bill Sub-Committee on 16th December 2020, Mary Aiston, Head of Counter Avoidance at HMRC, made two points in response to your questions, which were:

1. That (contrary to what tax barrister Keith Gordon had said, on the basis of information gained via Freedom of Information requests) potential advisers to the Morse Review had not been rejected due to having previously given evidence to a Parliamentary Committee (and that this was not a consideration in the selection process).
2. Instead, that advisers had either not been considered or had been rejected due to having expressed a public opinion around the Loan Charge.

Yet neither of these two related points are accurate.

Ms Aiston's statements were in response to the question you asked at the Finance Bill Sub-Committee oral evidence session to your Committee, which had been prompted by evidence given by Keith Gordon at the 14th December 2020 Oral Evidence Session.

The question you asked on 16th December was:

Lord Forsyth: *"It was specifically said that anyone who had given evidence to a parliamentary committee should not be included...I am slightly concerned at the idea that anybody who has given evidence to a parliamentary inquiry, which of course could now*

include you, should be discriminated against. Could you please clear up what that was about?"

Mary Aiston replied: *"I would agree that being a witness at a committee hearing should not per se exclude people from getting involved in an independent review or indeed anything else".*

She went on to say:

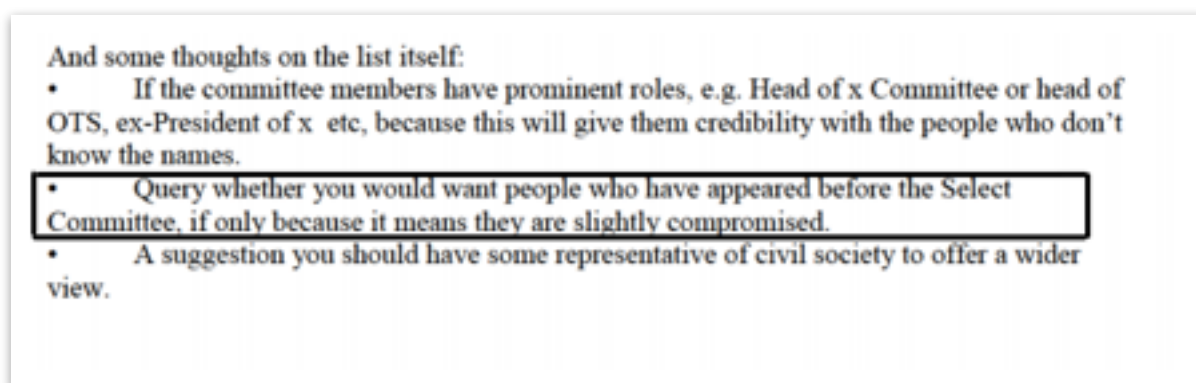
"As an independent reviewer, Sir Amyas Morse said that he wanted advisers who were knowledgeable about tax, but it was his (Sir Amyas') ask that they were people who had not had a public position in relation to the loan charge...The issue here was that Sir Amyas Morse was looking for people who had not had an opinion about the loan charge in the past."

Yet the first statement directly contradicts what was said in emails between the Loan Charge Review Secretariat and the Treasury, when advisers were being appointed. These emails were exposed through Freedom of Information requests.

In this email sent on 16th September 2019 at 18:32, a Treasury official (whose name has been redacted) sent an email to Siobhan Jones, then of the Loan Charge Review secretariat team (who is a Treasury official herself).

The email is responding to the proposed list and states:

“Query whether you would want people who have appeared before the Select Committee, if only because it means they are slightly compromised”.



This strongly infers that at least one of the people on the proposed list had appeared before a Select Committee.

Yet none of the advisers actually chosen had done so, which would mean that a decision was indeed then taken, on the advice of a Treasury official, to not proceed with a candidate or candidates who had done so – which directly contradicts what Mary Aiston told your committee.

The second statement exposes an even more serious point than Ms Aiston's contradictory and (yet again) unreliable evidence.

Mary Aiston told your committee that the reason some people may have been rejected is because they had made public statements about the Loan Charge.

Yet one of the two people who were chosen to be advisers *had* made public statements related to the Loan Charge.

Two advisers who were subsequently appointed, were Heather Self and David Goldberg QC.

Heather Self is a former member of the team in HMRC which is very much in scope of the review and whose behaviour was part of (or should have been part of the Morse Review). Her Linked-In page <https://uk.linkedin.com/in/heather-self-73693326> states that she worked for HMRC as an Anti-Avoidance Adviser from November 2008 - April 2011 (2 years, 6 months). This is of course a time when loan schemes were commonly used in many sectors and when HMRC claim it was clear they did not work. No doubt, this is a view held by all the Anti-Avoidance team at the time. HMRC also claim that they were taking effective action at precisely the time that Ms Self was an HMRC employee. So it frankly beggars belief that the supposedly independent Morse Review picked a former HMRC employee whose own department should have been subject to scrutiny and who has a clear interest in defending HMRC, as she was part of the organisation at a time when it is widely believed they failed to properly deal with the promotion and usage of loan schemes.

How very cosy, for the Review Secretariat team, of a supposedly independent review which was made up of staff from the two Government departments that were being scrutinised, to appoint an external adviser who is a former HMRC employee who worked for counter avoidance!

However, what is even worse, is that Ms Self has indeed expressed a clear and strong opinion on loan schemes, which blows Mary Aiston's claim out of the water. Heather Self had on several occasions prior to the 2019 Morse Review already publicly voiced opinions on the Loan Charge.

In this article (a year before the Morse Review, published **18th November 2018**, she states <https://www.taxjournal.com/articles/self-s-assessment-loan-charge-28112018>:

“I was asked whether the scheme was illegal. No, I said, but it was probably ineffective. Applying the duck test (if it looks like a duck, walks like a duck and quacks like a duck, it is probably a duck), I thought the amounts received as ‘loans’ were highly likely to be regarded as earnings”.

However, this next statement can leave no doubt that Ms Self had made her public position on loan schemes crystal clear:

“Bluntly, disguised remuneration loans were about dressing up part of an individual's remuneration as a free gift on which tax would never be paid; in my view, this was aggressive avoidance”.

The same quote is included in this article on the Blick Rothenberg website in Heather Self's name (the article is undated, but is pre 5th April 2019 and well prior to the selection of any advisers for the Morse Review) <https://www.blickrothenberg.com/insights/detail/selfs-assessment-the-loan-charge/>. Heather is a Corporate Tax partner of Blick Rothenberg)

Heather Self has stated on Twitter, during the course of an exchange with Keith Gordon (who as you know was not selected to be an adviser) that she:

“was not involved in investigating loan schemes when I was in HMRC. I did work alongside colleagues who did, and I was aware of Part 7A as it was introduced”.

In the same exchange of tweets, she goes on to say, “My view is that the law was clear from December 2010 so (in most cases) tax was due on schemes after that”. This statement, of course, concurs with the (deeply questionable) Morse Review conclusion. However, as has since been explained [including by the Loan Charge APPG](#), the law was *not* actually clear when it came to self-employed schemes, as opposed to employee schemes (the fundamental error that led to the fudged and compromised recommendation to halve the retrospection of the Loan Charge rather than moving the date to 2016 or 2017 - this being the date of Royal Assent).

Another adviser who was appointed, David Goldberg QC co-authored an article published on 13th July 2017 on the Rangers FC ruling by the Supreme Court:

<https://www.taxjournal.com/articles/rangers-fc-case-payments-remuneration-trust-were-themselves-remuneration-13072017>

In the penultimate paragraph the article asks:

“Can we really expect such blatant, unattractive devices to succeed in avoiding tax?”

Again, that is a public statement and one that suggests something of an already fully formed view regarding arrangements linked to the introduction of the Loan Charge (if not the Loan Charge itself).

So, the truth is that advisers were not appointed only if they had not made public statements on or related to the Loan Charge. **Two were appointed despite having very publicly made statements, including in the case of former HMRC employee Heather Self, of expressing strong criticism of the schemes subject to the Loan Charge.**

We make clear that we are not questioning the expertise and professionalism of Heather Self or David Goldberg QC (nor questioning David Goldberg’s suitability to be such an adviser to the review). The point is that they were both selected despite making public statements relating to the issue. So, if anyone actually states, as Ms Aiston certainly inferred, that advisers to the Morse Review were chosen because they had not expressed a public view on the Loan Charge, that would be a downright lie. Moreover, it does seem that what really ruled people out was if they had expressed any criticism of the Loan Charge or of HMRC!

In addition, the appointment of Heather Self, as a former HMRC employee working in the Anti-Avoidance team and working alongside HMRC employees investigating loan schemes, was wholly inappropriate and one that would not have even been considered for a *genuinely* independent review.

This is yet another example of bias and interference and more evidence to show that the Morse Review simply cannot be regarded as impartial or independent, as well as exposing an attempt by Mary Aiston to obscure the reality of the decision-making process to cover this up.

Add to this the fact that it took barrister Keith Gordon six months to get a response to his Freedom of Information request related to the appointment of advisers and that much information remains redacted. This suggests a significant and deliberate attempt by HMRC to prevent any evidence which could compromise their situation being made public which again begs the question *why, if they have nothing to hide?*

Once again, I'm afraid the evidence given by HMRC and by Mary Aiston is neither credible nor reliable and we urge you to continue to expose the disinformation that has been a key part of the Loan Charge Scandal.

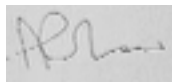
Thank you once again for raising the Loan Charge and continuing to challenge HMRC and the Treasury over this deeply concerning matter.

Yours sincerely



Steve Packham

Spokesman & Executive Director



Andrew Earnshaw

Executive Director

On behalf of the Loan Charge Action Group