



Allan Dorans MP  
House of Commons  
Westminster  
SW1A 0AA

11th February 2021

Dear Mr Dorans,

**Unacceptable and misleading answer to your Parliamentary Question**

We are writing with regard to your written Parliamentary Question to the Chancellor of the Exchequer, tabled on 1st December, relating to who the deemed employer or promoter was of loan schemes used by Revenue and Customs Digital Technology Services (RCTDS)- employed contractors post 2017; for what reason use of those schemes reportedly continued for three years after the enactment of the Finance Act 2017; and whether the then Comptroller and Auditor General of the National Audit Office audited and signed off RCTDS accounts in 2018.

We thank you for this and for continuing to challenge the Treasury regarding the Loan Charge.

Unfortunately, the answer from the Financial Secretary to the Treasury, Jesse Norman, on 7th December, fails to answer the question you were asking and worse than that, is disingenuous and an attempt to mislead.

**You asked (UIN 123692):**

**With reference to the Loan Charge, who the deemed employer or promoter was of loan schemes used by Revenue and Customs Digital Technology Services (RCTDS)-employed contractors post 2017; for what reason use of those schemes reportedly continued for three years after the enactment of the Finance Act 2017; and whether the then Comptroller and Auditor General of the National Audit Office audited and signed off RCTDS accounts in 2018.**

Jesse Norman answered:

*‘Revenue and Customs Digital Technology Services Limited (RCDS) has never participated in disguised remuneration tax avoidance schemes, for example by remunerating contractors through loans or payments to trusts. Since RCDS engages contractors via agencies or via companies providing services, it is possible for contractors to use disguised remuneration without the participation or knowledge of RCDS.*

As you will undoubtedly have already noticed yourself, given this rather meaningless response from Mr Norman, your question was not asking whether or not RCDS themselves participated in so called DR schemes, it was asking who was the deemed ‘employer/promoter’ for any contractors engaged for work on behalf of HMRC/RCDS.

Regarding Mr Norman's statement in reply - 'it is possible for contractors to use disguised remuneration without the participation or knowledge of RCDS' - HMRCs own mandated checks should have picked this up because the binding contractual agreement(s) between HMRC as the contracting authority and the nominated service provider/supplier clearly indicates that assurances must be provided by the latter before any individual or worker can possibly be engaged. All of the records pertinent to the engagement of a worker must be archived and kept for 6/7 years by the relevant body (service provider/supplier) who has a formal contract to supply those contingent staff to a government department such as HMRC, in order to ensure and validate full compliance with current tax legislation requirements.

Hence, the reply from Mr Norman is, at best misleading. HMRC surely should have known, and indeed should have this information, if they carried out the checks that they are mandated to perform. In any case, HMRC as tax authority would have that information. It is simply not credible for them to claim they do not have this information and couldn't have known, when clearly, they could have done and should have done. This has all the signs of deliberate non-disclosure and yet more dishonesty. As revealed in FOI FOI2020/03467, the response to the requester clearly (and publicly) states '*During this period, as now, the engagement and tax obligations of public sector engagements were considered under the Managing Public Money framework (MPM)*'. Governmental bodies such as HMRC **must** adhere to these contractual requirements. Within this FOI request there is also a link to a document entitled 'HMT Review of the tax arrangements of public sector appointees' dated **May 2012**. On page 15 of this document, section 4.A Recommendations states:

- engagements of more than six months in duration, for more than a daily rate of £220, should include contractual provisions that allow the department to seek **assurance regarding the income tax and NICS obligations of the engagee** - and to terminate the contract if that assurance is not provided.
- these measures should be implemented within three months - and implementation will be monitored after one year, reporting back to the Chief Secretary to the Treasury and the Minister for the Cabinet Office; and if it emerges that any departments have not abided by these rules, **sanctions will apply** - with departmental resource budgets reduced by up to five times the payment in question.

Another recent FOI request on the subject of contractors' compliance checks (FOI2020/02582) discloses the following:

PART A: SERVICES of the Framework Agreement embedded within the PSR (Public Sector Resourcing) call off contract includes the following section:

9.3.8 The Service Provider shall obtain a signed declaration from all Workers giving the Service Provider **permission to share their personal details and any supporting documentation to Contracting Authorities Authorised Users**.

The service provider maintains records for up to 6/7 years and they can be demanded **immediately** by the contracting authority or the engager i.e., the governmental department.

*'It is not possible for HM Revenue and Customs (HMRC) to provide details of any employers, promoters or schemes due to their statutory duty of confidentiality.'*

HMRC have conveniently used data protection not to answer, but the reality is that they *do* hold this information, but because it relates to HMRCs own contractors that were using DR schemes, they do not want to admit to this.

*'Use of disguised remuneration schemes continued after the enactment of the Finance Act 2017 because promoters continued to sell them, despite the clear view of HMRC that these schemes do not work.'*

It is clear and evident from the continued proliferation and availability of these schemes that HMRC/HMT have simply not tried hard enough to prevent the use of these arrangements being constantly thrust in front of unsuspecting contractors - including NHS workers returning to work to assist with the Covid-19 pandemic. Every week, emails freely advertising such arrangements continue to be sent out to thousands of existing (and potential) contractors. HMRC's **view** that they do not work does **not** prevent them from being sold. Despite HMRC/HMT's continued protestations that they are 'going after these promoters', nothing tangible is happening and this is wilfully deceiving Parliament and MPs. Under the current POTAS legislation, not a single promoter has yet been pursued or prosecuted for DR-related arrangements and neither HMRC or HMT has provided any clear, unequivocal evidence in relation to legal prosecutions for those offering so-called disguised remuneration schemes.

*'Any RCDTS contractor identified in the course of HM Revenue and Customs' compliance work as using a disguised remuneration scheme would be investigated in the same way as any other contractor. Where the use of disguised remuneration is found to be current, the relevant engagement is terminated with immediate effect.'*

If Mr Norman claims this to be the case, then WHY has HMRC not adhered to its own contractual guidelines laid down by HMT in 2012 - and **certainly** beyond 2017? If the law is apparently so clear, would we not expect it to be *crystal*-clear to HMRC themselves, along with all those providers, suppliers and agencies with whom they contractually and officially engage? In the aforementioned FOI, there is a link to the Public Sector Resourcing - CCS webpage, which provides the relevant documents pertaining to the sourcing of contractors and temporary workers for **all** public sector organisations (a service provided through Alexander Mann Solutions, who they state are supported by over 300 specialist recruitment agencies classified by their role category capability). It is apparent from the section termed 'benefits', that AMS provide workforce planning services, on-boarding and vetting, and address key policy initiatives such as agency worker regulations, off-payroll working in the public sector (IR35), transparency agenda, General Data Protection Regulations and automatic pensions enrolment - it is confirmed within the 'products and suppliers' section that they are the **SINGLE** supplier of this partnership service, with an expiration date to this agreement set at 15 January 2024. Extracts from that specific agreement follow below:

1.11. The Service Provider shall ensure all Workers engaged through the Public Sector Resourcing model **comply with all legislative and regulatory**

**requirements**, as detailed in the terms and conditions of the Framework Agreement.

In section 2 (DUE DILIGENCE) it states:

2.1 The Service Provider acknowledges that:

2.1.1 the Customer has delivered or made available to the Service Provider **all** of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under this Call Off Contract;

2.1.2 it has made its own enquiries to satisfy itself as to the **accuracy and adequacy** of the Due Diligence Information;

2.1.3 it has raised **all** relevant due diligence questions with the Customer before the Call Off Commencement Date;

2.1.4 it has undertaken **all** necessary due diligence and has entered into this Call Off Contract in reliance on its own due diligence alone;

HMRC (or any other public sector authority using PSR) is deemed the 'customer' in this reference.

Alexander Mann Solutions (supported by over 300 specialist recruitment 'agency providers' supplying contingent labour to the authority) is deemed the 'service provider' in this reference.

In the same FOI (FOI2020/02582), the response from HMRC states that '*all contracts with agencies supplying contractors to HMRC include standard tax compliance clauses*'. They also confirm that 'the PSR call off contract provides the **terms and conditions specific to tax compliance which are applicable to the *entire* supply chain for contingent labour**'.

Section 7.1.4 of the PSR call off contract states that the service provider shall (amongst other mandated requirements):

(n) be responsible for validating the accuracy of the information supplied by all Workers sourced via Non-Agency Supply;

(p) not raise charges where checks, as set out in paragraph 9.2 of the of the Framework Agreement Schedule 2 Part A Services, have already been made and evidenced to the satisfaction of the Authority and/or Contracting Authorities in the circumstances where additional checks are required to be undertaken on Workers before they commence an Assignment. These additional checks will be identified by the Authority and/or Contracting Authorities at the start of the recruitment process, and if required a charging structure agreed for the provision of this service in accordance with the Framework Agreement;

(q) **be responsible for ensuring that all documentation in relation to checks, referred to in Clause 7.1.4(p), is made available to the Authority and/or Contracting Authorities, *immediately upon request*.**

As reference to the above, paragraph 2 of the Framework Agreement Schedule 2 Part A Services states: **The Service Provider shall be responsible for all security vetting and compliance checks for each Worker prior to placement.**

In this same FOI response, HMRC also state the following - '*PRIOR to a contingent worker (where 'worker' means a person supplied to a contracting authority to provide worker services, whether engaged through a Personal Services Company (PSC), Umbrella Company, PAYE, Fixed Term Appointment (FTA) or any other mechanism pursuant to a requisition issued) commencing an assignment with HMRC, they **MUST** acknowledge acceptance of clauses regarding compliance with tax legislation*'.

This mandatory element is **key** to the engagement (via the established, government-endorsed PSR process) of any person defined as 'contingent labour' and we point you to item (p) in relation to section 7.1.4 above, which references these 'additional checks' required to be undertaken on workers **before** they commence an assignment. Whether a charge is levied by the service provider to the authority and/or contracting authority post-check, or whether a pre-agreed structure for the provision of this service is already in place, it is incidental in the context of this compulsory task as it is the check **itself**, based on the requirements clearly laid out by HMRC in relation to '**compliance with tax legislation**' contractual clauses, which is the crucial test for any worker to be *allowed* to be engaged to work for HMRC via the PSR rules.

As it states above, 'where checks have already been made and evidenced to the satisfaction of the authority and/or contracting authorities', this entry *explicitly* indicates that there is a process where the check has been completed and the authority and/or contracting authority has reviewed the information resulting from the check, which subsequently leads to a formal engagement if approved. With the service provider also being responsible for ensuring that **all** documentation relating to checks referenced in clause 7.1.4(p) is made available to the authority and/or contracting authority **immediately on request**, it is patently (and more importantly, contractually) clear that HMRC can make an immediate request to the service provider in order to provide the information sought by any inquiry relating to **any** contractor. The information which **proves** the contractor's compliance with tax legislation has already previously been requested **and recorded** by the service provider and is immediately available to HMRC (as per clause 7.1.4(q)), so any claim to the contrary is both misleading and disingenuous.

*'The Revenue and Customs Digital Services Ltd accounts ending 31 March 2018, 31 March 2019 and 31 March 2020 were audited by the NAO under Statute.'*

RCDTS accounts were signed off as follows:

Annual Report and Accounts for the year ended 31 March 2018 Sir Amyas C E Morse 20th July 2018

Annual Report and Accounts for the year ended 31 March 2019 Gareth Davies 16th July 2019

Annual Report and Accounts for the year ended 31 March 2020 Gareth Davies 2nd November 2020

We may speculate as to the precise reason why Mr Norman chose not to give the specific names of those individuals responsible for signing off these reports in his response, but it is a perhaps an unwelcome (and conspicuous) fact for Mr Norman that Sir Amyas Morse, the author of the (non) independent Loan Charge Review did *indeed* sign off the accounts for RCDTS in 2018. Given his clear, established and very obvious links with both

HMRC/HMT via his position as NAO Comptroller General, it is self-evident that his supposed independence from either of these governmental bodies when 'appointed' to conduct a review of such a controversial policy is undoubtedly in question.

Unfortunately, this is routinely typical of questions on the Loan Charge and epitomises the way that both HMRC and the Treasury have consistently misled MPs and peers over the Loan Charge and associated matters, something that the Loan Charge APPG has 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 thank you once again for asking these questions and we trust that you will continue 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.

Please do not hesitate to ask or to make contact with the Loan Charge APPG, for any assistance or advice on the issue via [contact@loanchargeappg.co.uk](mailto:contact@loanchargeappg.co.uk).

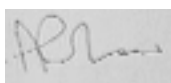
Thank you again and best wishes,

Yours sincerely



*Steve Packham*

Spokesman & Executive Director



*Andrew Earnshaw*

Executive Director

*On behalf of the Loan Charge Action Group*