



A new threat to those caught up in the Loan Charge Scandal – s.684 notices

In the latest sinister and dangerous development related to the controversial Loan Charge, HMRC has adopted a new tactic to target those people taken out of scope of the Loan Charge by the 2019 Morse Review.

HMRC has started issuing waves of **tax liability transfer letters** known as ‘*section 684 notices*’, informing the individual that the tax liability, which fell on the deemed employer, has now been transferred to them instead, making them liable for the tax HMRC believes should have been paid by that employer.

HMRC have now decided they are able to do this by using a ‘discretion’ to do so which is deeply contentious and was never intended for this purpose, misusing it in a way never intended by Parliament.

The Government must order HMRC to stop this – and the genuinely independent review that the Labour Party has committed to, must include the misuse of s.684 notices as well as the Loan Charge.

Background – IR35 and contracting

Tens of thousands of contractors and freelancers in numerous sectors were advised by Chartered Accountants and accredited tax advisers to use umbrella companies to avoid the risk of being caught by ‘IR35’ legislation. They were given written assurances that these were legitimate, compliant and approved. People paid large fees to the scheme promoters and operators for all administrative duties but also for them to ensure tax compliance, submit tax returns and pay the tax that was legally due.

HMRC did not warn people not to use these arrangements and did not close down the schemes. At the heart of the injustice of the whole Loan Charge Scandal is the fact that HMRC and the Government have ruthlessly pursued those who took professional advice and were advised to use these arrangements (or were pushed into them by employers and agencies) but have not demanded a penny of the disputed tax from the companies and individuals who made hundreds of millions of pounds from promoting and operating the schemes. This applies whether people are being hit with the Loan Charge, or with the s.684 tax liability transfer notices – the outcome is the same and continues to ruin lives.

Section 684 Notices, the ‘agency rules’ and HMRC’s failures at the time

Section 684 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) is the basis of all the rules that mandate the deduction of tax by employers and agencies when they pay their workers (usually known as Pay As You Earn or PAYE). It has been universally accepted that the agencies involved in the ‘disguised remuneration’ (DR) schemes caught by the Loan Charge should have operated PAYE (Pay As You Earn) in the first place, according to the relevant legislation and case law. Under the PAYE rules, HMRC have a ‘discretion’ to collect missing tax from the workers rather than their employers, but they can do so only in certain circumstances. The conditions were not met in these cases.

The section 684 notices (s.684(7A)(b) letters) are based on a power within the rules for HMRC to “*switch off*” an employer’s PAYE obligations when it is appropriate to do so. Typically, the power has been used to allow very short-term employments to operate outside the PAYE system so as to avoid the need for tax to be deducted and only a few weeks later to be repaid to the worker as the worker’s annual earnings are so low.

The way that HMRC is using these notices is overriding the normal process of dealing with open tax years and is both deeply controversial and profoundly unfair.

HMRC's overriding of the Morse Review

One of the main recommendations of the Morse Review was to limit the retrospective reach of the Loan Charge to 2010, thereby reducing the original twenty-year retrospective impact of the Loan Charge. However, HMRC are circumnavigating this, by using s.684 notices and issuing them in their thousands.

The Morse Review report clearly states: *“For the twenty-year look-back period of the Loan Charge to be proportionate and justified, taxpayers would need to have acted in a way that was perverse in light of a clear legal position. This was not the case. I therefore conclude that the Loan Charge should not apply to loans entered into by either individuals or employers before 9th December 2010, being the point at which the law became clear. HMRC should continue being able to settle and investigate cases prior to this point under their normal powers where they have appropriate grounds, and a legal basis, to do so”.*

HMRC are now issuing more s.684(7A)(b) letters to individuals for precisely those same years which the Morse Review removed from the Loan Charge. There is no evidence that HMRC told Sir Amyas (now Lord) Morse of this s.684(7A)(b) power even though they first used it two years before the review and he presumably was also not aware that HMRC would simply pursue people using this method, whilst still denying them their right to go through the normal process – and effectively rendering his recommendation meaningless (and by definition, redundant) in all these cases.

It is clear from the above wording in the Morse report that HMRC's pursuit of cases where an open enquiry was in place was expected to be carried out using 'normal powers' i.e., with HMRC challenging schemes through the tax tribunal system, effectively placing individuals back in the situation they would have been had the Loan Charge never been implemented and allowing the normal legal process.

HMRC themselves knew that the transfer of tax liability in these cases would be controversial. As exposed by a response to [a Freedom of Information request](#), they had to apply to their own internal (HMRC) Contentious Issues Panel (CIP) stating *“To our knowledge, this discretion has not previously been used to remove a PAYE liability which has arguably already arisen”*. They also state *“It is highly likely we will be challenged on our use of the discretion in contractor loans cases”*.

Another [Freedom of Information Request](#) has revealed that HMRC decided to override these concerns. The Contentious Issues Panel – which is of course just an internal HMRC group – approved the decision to do this. **Parliament was not consulted about this controversial decision** and MPs simply found out when HMRC started issuing them. HMRC did not even consult with the Government - they merely informed the Financial Secretary to the Treasury afterwards (and even then, wondered if they needed to bother, stating *“David and Penny are wondering if this is something to inform FSTs office?”*).

This is another abuse of the whole Parliamentary process by HMRC and another glaring example of their profound lack of accountability.

HMRC issuing thousands of s.684 Notices – with no realistic right of challenge

HMRC has sat on these cases – again, for up to twenty years - and suddenly, completely out of the blue, people are receiving letters informing them that an HMRC officer has used their 'discretion' to transfer an unpayable liability from the employer to them. They have just **thirty days** from the date on the letter in order to make a representation against it. HMRC confirm that the s.684 notices have no right of appeal

and that all individuals can do is to write back to HMRC saying they do not believe the notice has been correctly applied and to explain why (which is a technical matter based on HMRC's use of the discretion to forgive the employer or agency's previous non-compliance with the PAYE rules).

If an individual does *not* challenge the notice within the wholly unreasonable thirty-day limit, the employer's tax liability, which is likely to be a life-changing amount, is transferred to them and tax demands will then follow. Even if the individual *does* challenge the notice, the only way they can then overturn it is via Judicial Review, which is completely out of the question for most people, with a very significant cost involved and the need for legal representation. A judicial review must also be brought within a constrictive three-month period from the date of HMRC's letter, which is wholly unreasonable and disproportionately unfair – as it has taken HMRC often in excess of **fifteen** years to reach this point.

A recent [Freedom of Information request](#) has found that HMRC have already issued 3,000 of these s.684 notices, landing on the doormats of *already* vulnerable people, in the usual brown envelopes feared by those caught up in this never-ending nightmare and causing yet another urgent mental health crisis.

As the notice cannot be appealed – and cannot be taken to tax tribunal – it allows HMRC to issue tax demands based on its own estimates of what they *think* should have been paid at the time (rather than a legally proven tax bill). It is like another Loan Charge situation – simply issuing a s.684 to everybody and not conducting appropriate, focused investigation into each individual case. Those without tax firms assisting them will have no way to try to defend themselves and HMRC knows this only too well.

The enormous irony here is that HMRC's cynical use of this 'discretion' means that the Loan Charge was never needed in the first place, which also means HMRC have misled Parliament – and Ministers – as well as the Morse Review.

There is now nothing to stop HMRC issuing s.684 notices to every single person facing the Loan Charge who has open tax years going back many years (the majority of people). The alarming reality of HMRC giving itself this discretion is that s.684 notices can be technically used against *any* underlying tax 'debt' for *any* time that an employer has failed to operate PAYE correctly, going back to 1944. This is sinister, disturbing and clearly *not* what the discretion was ever intended to be used for.

If HMRC issue s.684 notices to all those with open years, there will be countless bankruptcies, innumerable breakdowns and a real and very serious risk of yet more suicides.

HMRC, already under pressure over the Loan Charge Scandal, then start issuing s.684 notices - coincidental or calculated?

The recent wave of s.684 notices has come just as the Loan Charge Scandal has broken through into the mainstream media and was the subject of a passionate debate in the House of Commons on [18th January](#), where MP after MP, from *all* sides of the House, slammed the Government and HMRC over the Loan Charge and the way that ordinary people are being pursued after being mis-sold these arrangements.

Shadow Chancellor Rachel Reeves MP has committed that if Labour wins the General Election, they will commission a fresh and **genuinely** independent review. This needs to be a *full* review of the whole issue and *must* include HMRC's use of the s.684 notices and the way they are now using the discretion retrospectively (and disregarding the fact that there was a UK agency or employer involved at the time). The Loan Charge Action Group has [written to Rachel Reeves](#) about this review and made clear that it *must* also look at the misuse of HMRC's discretion with the issue of these s.684 notices, as well as the Loan Charge.

People need to take professional advice and contact their own MP

Anyone receiving a s.684(7A)(b) letter is strongly advised to seek immediate legal advice from an appropriately qualified tax lawyer or advisor and to also write to their own MP as a matter of urgency, seeking their swift intervention – whilst also making the point that HMRC are deliberately bypassing a Morse recommendation as adopted by the Government, misusing and abusing a discretion given to them by Parliament in a way that was never envisaged *or* intended – an unfair and dangerous step to take.

There needs to be a fair resolution to this whole, unedifying mess and an investigation into the Loan Charge Scandal – and especially HMRC’s abuse of power

There is an urgent need for the Government – this, or indeed the next - to intervene and resolve the whole Loan Charge Scandal, not just in a way that ends this nightmare for the tens of thousands of UK families affected, but one that also resolves the issue for HMRC and the Government. This resolution must also deal with HMRC’s use of s.684 notices and its abuse of the discretion to transfer tax liability. A proper, *final* resolution is needed for all cases allowing people to move on with their lives and for HMRC to stop spending time persecuting workers who were mis-sold, and to instead focus on tax evasion, Covid loan fraud and corporate abuse of the tax system.

The Government has so far refused to engage with the [proposal by a group of independent sector professionals](#) and they must now do so. Without a resolution, many thousands of people face ruin, either from the Loan Charge or the equally horrendous s.684 demands, despite being victims of mis-selling.

Ministers must listen and show some common sense and compassion before more lives are ruined. There is a serious risk of more suicides if the Government allows HMRC to continue its punitively unfair, unethical and dangerous approach.

There needs to be a full, **truly** independent investigation and review into the entire Loan Charge Scandal and the way HMRC has behaved towards those caught up in this ongoing nightmare. This investigation must also incorporate HMRC’s misuse of the ‘discretion’ to transfer the liability from those who *should* be responsible to the workers, and the subsequent s.684 notices it is now issuing as a result.

Loan Charge Action Group

February 2024