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8<sup>th</sup> March 2024

Dear Nigel,

### **House of Commons Debate on the Loan Charge – issues with your speech**

We are writing to you following the debate in the House of Commons on 18<sup>th</sup> January 2024 on the Loan Charge.

As you will be aware from the considerable number of MPs that participated in this debate, there is enormous strength of feeling on all sides of the House of Commons about the whole Loan Charge Scandal and the way HMRC has behaved. The many speeches, every single one critical of HMRC and the Government over the matter, showed clearly how MPs feel about this. All these MPs have knowledge of constituents who have been affected so badly by this pernicious and retrospective legislation.

Your senior colleague, Sir Jacob Rees-Mogg MP made this crucial point:

*“HMRC is in the odd situation of being a non-ministerial Department. It is not properly accountable. With most Departments, the Minister says “Go” and—at least theoretically—they goeth. With HMRC, its independence is such that it can effectively ignore ministerial control. But that should work two ways. **If the Minister cannot control HMRC, he should not read out the rubbish that it provides for him to read out from the Dispatch Box, and he should be well aware of the warnings given of Ministers who have either been willing to read out things that turn out in future to be untrue, or not asked the right questions.**”*

We were therefore most disappointed that despite this and despite all that you heard during the debate, you continued to do what your predecessors have done and simply read the script that you had been provided by HMRC and your officials. We have suffered this from the previous five Financial Secretaries to the Treasury. The only Treasury Minister who had the courage to take a different approach and express concern about the whole issue, Richard Fuller MP, was sacked just a couple of weeks later.

We would like to address some of your comments from the debate and we have some questions to ask you regarding them. Your words are in blue.

First of all, you claim to have been asking questions and challenging officials:

*“I can assure hon. Members that the Government take the issue incredibly seriously and recognise the impact the loan charge has had. I will endeavour to address the points that have been raised in the debate, but I also wish to reassure colleagues that many of the questions they have asked,*

*about disguised remuneration, Government policy, the loan charge and the approach and tone taken by HMRC, are precisely the questions that I have been asking officials, for the very reasons they have outlined.”*

Could you please share with us the questions you have asked? Are there meeting minutes that cover the details of those?

From the content of both your speech in the Loan Charge debate and also your responses to Treasury Questions on the matter, there is no evidence at all that you are challenging anything you are being told. You simply continue to repeat discredited propaganda and give reassurances to MPs that we know, from the testimony of thousands of people, are utterly hollow (and indeed, very often the polar opposite of the reality of how HMRC behaves).

We do urge you therefore to share *what* questions you have asked of HMRC and *what* answers you have received, otherwise to claim you are challenging them is just not credible.

You also gave this account of the history of the Loan Charge debacle, as follows:

*“Briefly, by way of context, because not everybody who is listening to this may be aware, the purpose of the loan charge was to ensure that users of disguised remuneration schemes paid their fair share of income tax and national insurance contributions. Disguised remuneration schemes are contrived tax avoidance arrangements that seek to avoid income tax and national insurance on income by disguising it as some other type of payment, typically in the form of a loan that is wrongly alleged to be non-taxable”.*

We have seen this exact wording on numerous prior occasions in response to both Freedom of Information (FOI) requests and written questions by MPs – this is simply an attempt to control the public narrative and to give the false impression that the law was clear that individuals were liable for the tax. In actual fact, as you presumably are aware, the agencies involved in the so called ‘disguised remuneration’ (DR) schemes caught by the Loan Charge should have operated PAYE in the first place, according to the relevant legislation and case law. Agency legislation exists to capture situations where umbrella companies were operating offshore, but used a UK company (the agency) to give the contractor and the companies they worked at the impression of compliance. **Where this legislation applies, the UK entity – the agency – adopts the obligations of the umbrella.** HMRC [policy and internal guidance](#) says that they could have (and *should* have) used the agency provisions of section 44 ITEPA 2003 to collect the PAYE income tax that was legally due from the agencies. **They both failed to do this at the time and also failed to police the sector.**

Your narrative is therefore both partial and very misleading – and an unacceptable response to be on the Parliamentary record.

You also mentioned the Supreme Court judgment in 2017, as if that was legal justification for the Loan Charge and the whole approach of pursuing individuals and not those who promoted and operated the schemes or the employers who used contractors that had been advised to use them:

*“In 2017, the Supreme Court agreed that the schemes did not work and have never worked to legitimately avoid tax, so tax is due on these payments. However, as I have heard very clearly in this debate, many questions have been raised about how we recover that tax due and who has paid it.”*

This is a legally unsound description of the judgment in what was the culmination of a series of court cases, moving through the court system.

In actual fact, HMRC lost previous cases when it argued that the loans were taxable. For the Supreme Court hearing on the Rangers case, which happened *after* the Loan Charge legislation had been introduced to Parliament, the Supreme Court **found that *the employers/agencies were liable for the tax that the Court decided should have been paid.***

*“In 2022, the Court of Appeal ruled that, even where other parties may have obligations to withhold tax under PAYE, the liability for income tax is always that of the individual, fully endorsing a long-standing position of HMRC and of Governments of all colours. That is a key point: the individual is ultimately primarily responsible for the tax they owe and for their own tax affairs.”*

This is legally incoherent and is confusing two separate legal points. As above, HMRC policy and internal guidance says that they could have (and *should* have) used the agency provisions of section 44 ITEPA 2003 to collect the PAYE income tax that was legally due from the agencies and failed to do so. **Had they done so, there would never have been any need for the Loan Charge (and there would not have been thousands of families ruined with ten people taking their own lives).**

Under the PAYE rules, HMRC do 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. **Instead, HMRC conceived of the Loan Charge to be able to go back and demand tax from the workers that had used the schemes (not the agencies).** There are strict conditions for the use of this power and HMRC themselves knew that its use would be controversial in cases involving contractors. Despite this, a [Freedom of Information request](#) has revealed that HMRC decided to override these concerns and have used the power to collect the tax from the contractors.

Sir Jacob Rees-Mogg made the following comment:

*My hon. Friend refers to the 2017 Supreme Court judgment. As I understand it, that judgment decided that responsibility for the use of an employee benefit trust for tax fell unequivocally on the employer, so it does not necessarily support him in the way he may think.*

You responded:

*“There has been debate and disagreement on that, particularly as it relates to section 44 of the Income Tax (Earnings and Pensions) Act 2003 and so on. HMRC has outlined the policy stance on this. Although I understand that there is disagreement, the line is quite clear at the moment.”*

This is an extremely significant statement and very important in the context of this debate. HMRC, who will have provided this ‘line’ to the Financial Secretary to the Treasury are effectively saying that their ‘view’ is right, when what matters is the law – and the law is clear that HMRC should have collected PAYE from agencies/employers at the time and failed to do so (hence then controversially using the discretion in a way that Parliament never intended, another abuse of power).

You went on to give the impression that it is mainly employers that have been made to pay the tax that HMRC has said is due.

*“I completely understand where the hon. Gentleman is coming from in relation to going after employers that have been deceptive. The loan charge ensures that tax is paid in respect of individuals who entered into the schemes and received payments with no tax deducted, but where possible, HMRC has been seeking that tax from the employer in the first instance. I would like to*

*reassure hon. Members that 80% of the revenue collected to date has come from employers, so we are targeting the employers, as he rightly points out.”*

First of all, where you say employers have been “deceptive” can you please explain what you mean, as this is a very serious allegation. If any employers have deceived HMRC, then this is a criminal offence of fraud and/or cheating the revenue. If this has happened, please publish what criminal cases HMRC has taken in this regard, and when it did so.

The rest of your statement is yet another attempt to sidestep and distract attention from the reality of the ‘agency rules’, as above, which clearly state that HMRC should have been in receipt of PAYE deductions from agencies/employers at the time, yet knowingly failed to collect. This was a very significant failure on the part of a Government body and one that you now, as the responsible Minister, should be investigating, and not instead pretending it never happened by reading out HMRC propaganda.

It is also very notable that the Treasury and HMRC have both refused to give any information or proper answers about this often claimed 80% (and the £3.9 billion figure that has often accompanied it). The Loan Charge itself is focused on *individuals* (both contractors and small limited company directors) not on large employers, so this claim is completely misrepresenting the reality of the impact of the Loan Charge on individual workers.

One aspect that HMRC has refused to address is whether or not ‘employers’ includes very small limited companies, including personal service companies, which are effectively just the companies of individual contractors (who may technically be employees of their own company). That will include a *vast* number of individuals. This is a point made in [this report by the Loan Charge APPG](#).

In this debate and also in answers to Treasury questions, we note that you are seeking to give the impression that HMRC are behaving in a reasonable, indeed generous way to those caught up in the nightmare of the Loan Charge Scandal. You said:

*“As I said, the way in which we recover tax owed is important, including the interactions that individuals have with key bodies such as HMRC....We have listened to concerns raised by hon. Members in the years since the loan charge was announced, and I have had conversations with HMRC about how it has, for example, endeavoured to improve the tone of communication with impacted individuals.”*

The view of those being targeted by HMRC is the polar opposite of which the Financial Secretary to the Treasury claims – you will clearly understand that from the many powerful testimonies shared by MPs in the debate.

This also relates to your claims about ‘challenging’ HMRC. It is abundantly clear that up to now, you have not looked at any evidence, neither provided by HMRC or your own officials.

- Why are you not looking at evidence provided by those *actually* facing the Loan Charge, including the families of those who have killed themselves as a result of your Government’s policy?
- Why have you not sought and looked at the huge amount of evidence already published by the Loan Charge and Taxpayer Fairness APPG and the Loan Charge Action Group?

- Why have you yourself, not asked for evidence *directly*. Rather than taking as fact everything you are being told by HMRC and indirectly, through your officials who have been shown to have an inappropriately close relationship with HMRC?

Like the Post Office scandal, Ministers were too quick to believe what they were being told by the Post Office, whilst ignoring those affected and the evidence. The way you are approaching this matter is very similar and we would urge you to adopt a different approach, or you yourself will be culpable in the whole Loan Charge Scandal – and the impact it will inevitably have, unless the Government listens and changes course.

You also reference the 2019 Morse Review and as usual, give the false impression that this was a full review of the whole issue, when you know it was not, as well as claiming it was independent, when it has been exposed as being anything but independent. You state:

*“Changes in approach were also made following Lord Morse’s review, about which I have heard many comments today. Many people may not be aware, but in September 2019, the Government asked the former Comptroller and Auditor General of the National Audit Office, Lord Morse, to lead an independent review of the loan charge policy and its implementation. Lord Morse had full discretion over how the review was run, who he consulted and the recommendations made. That consultation included the APPG and many of the people in the Chamber today.”*

And then:

*“The Morse review followed the normal process for such reviews, in terms of the secretariat and support being provided by Government Departments. I have heard the comments made today, but I do not believe a case has been made for another review. I always stand ready to listen, but I think that review stood up quite well. I do not think anybody has impugned the integrity of Lord Morse today, but that review was thorough and significant”.*

The Morse Review has been exposed as not being genuinely independent. The Loan Charge & Taxpayer Fairness APPG published [a damning report](#) in June 2020 exposing this.

Numerous FOIs have exposed the lack of independence of the review, the way in which HMRC and the Treasury engineered and orchestrated the appointment of ‘experts’ to assist in the review and HMRC and the Treasury were also given advance visibility of the draft report before it was published. That draft report has been requested via another FOI request, consistently refused and has now been taken to the First Tier Tribunal. What is there to hide here?

The review was staffed by officials from HMRC and the Treasury. FOI responses revealed emails that show a wholly inappropriate relationship between the review team and HMRC and Treasury staff. HMRC and Treasury officials also received a draft of the Morse Report and were permitted to make changes.

Lord Morse has also refused to respond to three separate letters which provide clear and detailed evidence of his fundamentally flawed conclusions, the first of which is [here](#). Within this letter there are many detailed explanations as to why the review was flawed. All ignored. We would be grateful for your comments on this letter and as to why Lord Morse as a Parliamentarian, should now be allowed to wash his hands of the entire debacle.

Just as important is the fact that the Morse Review was NOT a full review of the *whole* issue and scandal. Senior officials in HMT and HMRC sought to severely restrict the scope and terms of the review before it even started – emails have been disclosed in a number of different FOI responses (see examples below – there are more in the request [here](#)):



***"At official level, our view is that we recommend ruling out a repeal from the start for fiscal, practical, and wider reputational reasons".***

*"Separately, as discussed, the Chancellor has asked us to work up, on a contingency basis, what the minimum form of an independent review would look like, in case the PM wants to proceed with one. Welcome your views on what this should cover, but at the minimum it should set out something that that can reasonably **be described as an independent review, but that minimises the spending/legislative/other risks** that a review creates."*

The final remit, decided by the Treasury, was restricted to focus only on individuals and avoid looking at the role of promoters, the role of client companies and to avoid *any* focus on HMRC's own failures to police the sector and enforce the agency rules. It was also drafted to ignore how and why HMRC conceived of the Loan Charge, the flawed impact assessment and their own campaign of disinformation.

Please therefore stop referring to the Morse Review as if it looked at the *whole* issue in the round, when it had been cynically and expressly, designed not to do so.

In your speech you went on to state that the Government had accepted the bulk of the recommendations:

*"Following the review, Lord Morse recommended notable changes to the policy, and the Government accepted 19 of his 20 recommendations. Those changes benefit about 30,000 people and meant that the loan charge would apply only to outstanding loans made on or after 9 December 2010, rather than April 1999. That was the date when the Government announced anti-avoidance legislation that put beyond all doubt that the schemes were taxable—a very important date. The loan charge would also not apply to outstanding loans made in any tax years before 6 April 2016 where a reasonable disclosure of the use of a tax avoidance scheme was made to HMRC, but HMRC did not take action—again, some have made that point today. Taxpayers were also given additional flexibility in the way they pay in line with their individual circumstances, but Lord Morse was clear that the loan charge was necessary and in the public interest, and should remain in force."*

And then:

*"...nineteen of the recommended changes were implemented. It was a hugely impactful and very thorough review."*

In actual fact, introduction of legislation in 2010 did not make the law clear, with no clear court rulings until 2017 (and that stated that the payments from employers into the EBTs were taxable). The fundamental conclusion that the law was clear from December 2010 is therefore unsound. This is also covered in [a report by the APPG from May 2020](#) analysing the conclusions of the Morse report.

Related to this, Wera Hobhouse made this important point:

*"Does the Minister not recognise that quite a lot of people who used the schemes, who were made contractors against their will, are often just individuals who are not tax experts, who paid the tax they were asked to pay at the time and did not think anything was wrong until years later, when suddenly HMRC came to pursue them? Does he not recognise that he is doing the wrong thing to those people who really did not know better?"*

You responded:

*"I thank the hon. Lady for her comment and I understand completely where she is coming from, but there are multiple points to discuss there. The schemes were never legitimate; they were always tax avoidance, and therefore there was always a clear path that tax was owed. With respect to who then pays, I will mention that in a moment, but, if we move away from the underlying principle that individuals still have personal responsibility to check their tax affairs, it is very difficult to move back to it. **I will also come on to the point she raises about further Government action in a moment, because there are some people are being deceived and forced into errors that are completely inappropriate.**"*

Yet the law was NOT clear prior to December 2010, as clearly shown by the fact that there was no settled decision until 2017, so there was never a 'clear path' that tax was owed, that is simply not the legal reality. It is also not the case that the law was clear after this date as the legislation which was implemented did not apply to certain types of employment.

In addition, can you please tell us what the last sentence, that we have put in bold, means? You did not appear to elaborate on this later in your speech, as you suggested you would or if you did, it was very unclear when. This sentence has caused considerable concern to people already severely distressed by the whole scandal and the way they have been persecuted by HMRC, so could you please say precisely who are being deceived and in what way and also who is being forced into errors that are completely inappropriate (your use of the word 'forced' is especially troubling).

Even with the Morse Review recommendations that were accepted, these have had little or no impact for many people affected by this whole scandal. They were deliberately weak and watered down in order to appease MPs who did not look into the details. Saying that recommendations were accepted is a smoke screen for what in real terms those recommendations would actually achieve.

For example, from a [Freedom of Information request](#) we can see that just **30** people (out of a possible 67,000 affected) have met the criteria for 'reasonable disclosure' based on the distorted interpretation placed on this test by HMRC.

As for the key recommendation to limit the retrospective reach of the Loan Charge to 2010, reducing the original 20-year retrospective impact of the Loan Charge, the reality is that in thousands of cases, HMRC are circumnavigating this, by issuing waves of **tax liability transfer letters** known as '*section 684 notices*'. These totally unexpected notices are now telling the individual that the tax liability, that was with the deemed employer, has been transferred to *them*, making *them* liable for the tax HMRC believes should have been paid. HMRC can only do this now by calling upon using a deeply contentious 'discretion', that was never intended for this purpose, misusing it in a way never intended by Parliament.

The Morse Review report states clearly: "*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 intended should be 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. He presumably was not aware that HMRC would simply pursue people in this alternative way, still denying them any right to go through the *normal* process – and making his recommendation effectively meaningless in all 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 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). 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.

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.

HMRC themselves knew that the transfer of tax liability in these cases would be controversial. As exposed by [a Freedom of Information request](#), they had to apply to their own (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”*.

Despite this, 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 didn’t 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.

You went on to give the impression that HMRC had been pursuing promoters of schemes, as opposed to just those who used them and were mis-sold them:



*“Many hon. Members have also made points about tackling promoters, and some individuals facing the loan charge feel rightly aggrieved at the promoters and enablers who facilitated the use of these schemes. Promoters of tax avoidance schemes are parasites on the tax system—let us be in no doubt about that. They cause untold misery to the people they tempt into using those schemes, which almost never deliver the tax savings that were promised. The Government have prioritised tackling promoters of tax avoidance schemes and have given HMRC additional powers to do so, as a result of which many promoters have stopped promoting those types of scheme. One individual involved in the promotion of schemes subject to the loan charge has already been convicted, and others are currently under criminal investigation for offences linked to the loan charge.”*

Despite your attempts to give the impression that HMRC and Government have been pursuing promoters and operators, the fact is that HMRC have failed to seek ANY of the disputed tax from those who promoted and operated the schemes, and who made huge amounts of profit as a result.

There have also been no arrests, prosecutions or convictions of anyone that promoted loan schemes now subject to the Loan Charge.

When asked about this, HMRC officials and Treasury Ministers have for several years routinely referred to 20 convictions and 100 years of custodial sentences, most recently at the Treasury Select Committee meeting on 18<sup>th</sup> October 2023 when Jim Harra was exposed as being evasive and giving misleading answers to your Conservative colleague, Danny Kruger. The APPG [wrote to HMRC about this](#). This was also followed by a letter from [LCAG to the Treasury Select Committee](#) detailing the convictions or offences relating to tax evasion or fraud where arrangements have been promoted and marketed as tax avoidance. This demonstrated that HMRC had indeed been misleading MPs as none of these had anything to do with the Loan Charge. When the APPG eventually received a [response from Jim Harra at HMRC](#) he admitted that since 2016 just one person involved in the promotion of DR schemes subject to the Loan Charge had been convicted for an offence linked to the Loan Charge (and not actually for promoting and operating the schemes themselves).

HMRC had previously (and privately) admitted that they would not be pursuing promoters, at the same time as deliberately giving the impression (in public) that they were taking action. In an email (15/8/19) from Penny Ciniewicz, Director General of the Customer Compliance Group, she said ([page 27 of the FOI response](#)):

**“In terms of promoters, as the note we shared yesterday with FST indicates, we can’t commit to going after promoters of previous schemes for the reasons set out there”.**

It has also emerged that HMRC took a deliberate decision to continue to blame, persecute and pursue individuals despite them *overwhelmingly* following professional advice in using the arrangements they did as contract and freelance workers. Carol Bristow, HMRC Individuals Policy Director in Customer Strategy and Tax Design Group said this in an email (23/8/19, [page 43 of the FOI response](#)):

*“...I concluded any review on promoters would be used to claim that individuals were not accountable, and so the loan charge was wrongly directed against them.”*

You also go on to discuss recent powers given to HMRC:

*“Through Finance Acts in 2021 and 2022, the Government also introduced powers that allow HMRC to take action more quickly against promoters. Those include the power to publish details of promoters of tax avoidance schemes and others involved in the implementation of such schemes. In 2022, for example, HMRC issued a penalty of £1 million to a promoter of disguised remuneration schemes, and provisions included in the Finance Bill currently progressing through this House will make it a criminal offence to promote tax avoidance schemes after HMRC has issued a stop notice under the promoters of tax avoidance schemes rules. I am very pleased to say that those measures are receiving support from all parties.”*

The reference to the fine for a promoter is misleading, as the £1 million fine was for the company concerned (Hyrax) merely for not recording their arrangements under the DOTAS rules. It was **not** a punishment for promoting and operating the arrangements.

You mention that HMRC now name schemes and promoters online, as if this deals with the problem. Under the Finance Act 2021, names are only added for a year, then removed, which is a farce. None of those already affected by the Loan Charge Scandal would be likely to see this unless they avidly monitor HMRC online which in reality ordinary workers do NOT and if they were to see it, it would be far too late to help them.

Naming schemes and operators does nothing to help those hit with life-changing bills for having used them, having been recommended to do so and having been assured they were fully legal and compliant.

You also refer to HMRC issuing Stop Notices. The reality of this limited measure is that any promoter in receipt of a Stop Notice will of course stop that particular scheme, dissolve associated companies and disappear (as has been a common pattern). HMRC’s proposed new criminal offence for promoters for failing to comply with a Stop Notice will not apply if the same promoter promotes new or different schemes, which is another farce! As tax lawyer and former member of HMRC staff Dr Osita Mba said about this, the reality of the proposed new law is *“stop cheating the public revenue (and defrauding your clients) with this scheme. But you’re free to cheat the public revenue (and defraud your clients) with other schemes until we ask you to stop!”*.

What the Government and HMRC should of course be doing – and could if they really wanted to stop promoters – would be to stop the schemes in the first place, before they dupe people into using them and then many years later hitting them with unexpected and unaffordable bills. That is the only action which is meaningful, but HMRC have a dreadful record of failure in that regard of failing to shut down schemes, failing to directly warn people and signing off years of tax returns without raising any issue.

So, it is more tough sounding talk, but is clearly inadequate, flawed and utterly meaningless and in any case, does absolutely *nothing* to help those who were recommended and mis-sold these schemes, who HMRC will continue to pursue ruthlessly, regardless of the fact that they took, and followed, professional advice or were duped into using these schemes (and in some cases were obliged to use them by recruiters/umbrella companies).

You mention the long-discussed Government commitment to take action on umbrella companies:

*“The Government also consulted last summer on measures to address non-compliance in the umbrella company market—again, many hon. Members have commented on that market today—including tackling the types of schemes we have discussed. We will respond to that consultation in due course, but I can let hon. Members know that I and my hon. Friend the Member for Thirsk and*

*Malton (Kevin Hollinrake), the Minister for small business at the Department for Business and Trade, are already discussing what the next steps should be. In the meantime, HMRC will continue to use its full range of civil and criminal powers to disrupt the operations of promoters.”*

Why is the Government taking so long to act? Umbrella companies remain unregulated to this day. This Government will only be in office for another seven or eight months. Are you going to act in that time – and in time to get legislation through before you leave office? As it is, this Conservative Government has overseen the Loan Charge Scandal. Without meaningful action to clean up the *whole* supply chain (recruitment agencies, as well as umbrella companies) and without clarity on how contractors should operate, failure to act could lead to another similar scandal.

You claimed in your speech that there the Loan Charge can be appealed, which is deeply misleading. You said:

*“Other points of clarification were raised by hon. Members, and I will endeavour to write to them because there were a few factual inaccuracies. For example, there is an appeals process—it is very important to make that point—and this is not an area in which criminal convictions are acted against the individuals. I will write to hon. Members because there is a lot to debate in this area, but it is very important to make sure that we do not scare people.”*

And then:

*“For example, we must make it clear that there is an appeal process, and there is of course no cost for the appeal process. “There are also other matters that I would like to make hon. Members aware of”*

The reality is that Loan Charge legislation ignores and removes basic statutory taxpayer protections:

- It reopens 'closed years' (*legislation specifies that once HMRC have closed an enquiry into a tax year, it cannot be reopened*).
- It ignores statutory time limits which only allow for tax returns to be open for 12 months before raising an enquiry, or reopened within 4 years for simple errors, 6 years for carelessness or 20 years for evasion/fraud.
- It goes back beyond the 7-year statutory requirement to keep financial records. *This means people who no longer have records are unable to prove that HMRC are incorrect.*

Because of the removal of statutory taxpayer protections and safeguards, the Loan Charge does not allow a normal appeal process to take place. The application of the Loan Charge cannot be appealed. The Loan Charge requires that unpaid loans from previous years were included in the 2018/19 tax return. When processed, these values appear in a “statement”. There is **no appeal process** against such a statement. Only by not disclosing or disclosing in a different place or disclosing a nominal £1, can HMRC be forced into issuing an assessment that can be appealed (and in due course proceed to Tribunal). Non-disclosure or nominal values all risk penalties. Taxpayers therefore have a double jeopardy by doing this, which is the only way they can appeal anything. Your words, therefore, are completely wrong and we strongly suggest you speak to officials to understand this.

Also, what exactly are you referring to when you claim there is ‘no cost’ to appeal? As above, the only thing that can be appealed is forcing HMRC into issuing an assessment, which then means the matter goes to tax tribunal (court) which of course has a (significant) cost to those involved. HMRC has access to unlimited taxpayer funds for legal cases, which allows them to

protract legal proceedings in ways which exhaust any funds which the taxpayer can afford. How you could describe any of this as cost-free is as baffling as it is troubling. Plus, with the likely addition of penalties for the non-disclosure/nominal value disclosure, then the costs are even greater. We therefore ask you to speak to officials and correct the record, regarding any right to appeal.

You also referenced the impact of the Loan Charge and the suicides:

*“Many Members have raised the personal and emotional impact of the loan charge on their constituents. This is something that I, the Government and HMRC do take very seriously. We recognise the distress that loan scheme users may feel when faced with large tax bills on their earnings, often many years after the event, which the scheme promoters wrongly told them they would be able to avoid. We are aware that some people who faced the loan charge have, very sadly, taken their own lives or harmed themselves. HMRC has made 10 referrals to the Independent Office for Police Conduct where a person has taken their own life, and following each referral, HMRC has conducted an internal investigation. Nine of the 10 investigations have concluded, and although no misconduct was found, HMRC is taking forward organisational learning from these matters to further strengthen the support provided in identifying individuals who need extra help.”*

The Loan Charge and Taxpayer Fairness APPG wrote a [letter](#) on the 12<sup>th</sup> September 2023 to Jim Harra on this subject. Previously the impression has been given (or has been taken) that because HMRC has referred the 10 suicides to the IOPC, that the IOPC would have investigated these. **It is now confirmed that this is not the case and that the IOPC has not investigated ANY of the 10 suicides**. The IOPC instead referred them back to HMRC, for internal investigation, which considering the concerns about HMRC’s conduct in the whole Loan Charge Scandal, is frankly extraordinary.

It is also clear from the response of the IOPC that despite there being a clear link between the Loan Charge and associated HMRC demands and the suicides, that this is something not considered by the IOPC or by HMRC’s internal investigations. In their letter, they state, *“the IOPC would not be able to offer an opinion on the merits or otherwise of the Loan Charge, which is a matter of tax policy and is for the Government to propose, Parliament to determine and, where necessary, the Courts to clarify”*. They have also made clear that, despite the fact that all ten suicides were of people facing HMRC action related to the Loan Charge/DR schemes, that this has not been considered, instead that all cases are looked at separately.

Considering the clear link between the pressure of facing the Loan Charge and HMRC action related to it and the suicides, to not consider this (or ignore) it would render the investigation process partial, indeed of little worth in terms of establishing the reasons that these individuals took their own life.

You also mention the emotional distress of individuals impacted by the Loan Charge and claim you will raise the tone of communications with HMRC (as if this is the fundamental problem):

*“I completely understand the points raised by hon. Members and, indeed, I have myself heard about the emotional distress from individuals impacted by the loan charge. Colleagues have also commented on the nature and tone of interactions with HMRC in the past. Again, I have raised this with HMRC officials, and I will continue to make the point that they should adopt a more understanding tone.”*

Victims have seen this rhetoric and these promises time and time again – nothing ever changes with the way HMRC ‘interact’ with those victims. If ten people dying is not enough to halt a policy, how many will be?

You go on to reference support offered to people facing the Loan Charge:

*“Thousands of people are still not engaging with it and are therefore not able to seek clarity or the support and guidance available, including emotional support, help from the Samaritans and other measures that HMRC has in place to identify and support vulnerable individuals. I repeat my thanks to hon. Members for their engagement, and I welcome continued engagement, including with the APPG and all MPs who have raised this topic with me on behalf of their constituents.”*

The facts are over 40,000 people still face the Loan Charge, nearly five years after its implementation, which in itself shows what a disastrous policy failure it has been (as well as not stopping schemes continuing to be mis-sold). You talk about some people not engaging. Is that any wonder, considering all that you heard from colleagues in the debate? All that happens when people contact HMRC is being slapped with demands and receiving brown envelopes in the post that they have no idea how to deal with without consulting costly tax experts (if they can afford to engage them). HMRC are ruthlessly focused on collecting as much as they possibly can, regardless of the consequences – and we have huge amounts of evidence to show the reality of how they treat people. The APPG also published [this report on HMRC’s conduct in June 2019](#). Nothing has changed even in the rhetoric that you are giving, which is cynically designed to give the false impression that HMRC are in some way sympathetic or reasonable when they are neither.

If you are at all serious about wanting people to engage, then you yourself must engage with us and with those directly caught up in this nightmare. Due to the whole history of the Loan Charge Scandal, the deliberate demonising of those involved, the consistent disinformation and dishonest propaganda and the cruel and unfair treatment of people by HMRC, there is zero trust in HMRC or in the Treasury on this matter. That will not change until Ministers and HMRC change their own behaviour, stop the dishonest rhetoric and engage in a meaningful way with those affected.

Perhaps most striking is that you refer to the Samaritans. For a minister to suggest that the Samaritans are necessary to support victims of your own Government’s failed policy says it all. There have already been 10 suicides of individuals facing the Loan Charge [confirmed by HMRC in January 2023 \(p.3\)](#). HMRC have also since confirmed that they have [referred 13 suicide attempts to the Independent Office of Police Conduct](#) (IOPC) and another 11 cases of ‘serious self-harm’.

There have also been bankruptcies, people have had to sell their homes and there have been numerous marital and family breakups. The reality is that those affected simply cannot afford the sums being demanded. If HMRC enforces these bills, there will be many more bankruptcies, a great number of people impacted will never work again and there remains a serious and very real further suicide risk, yet HMRC continue to blindly and ruthlessly pursue these victims.

The simple question for you, as responsible Minister, is how many Loan Charge suicides are you prepared to see on *your* watch? As far as we are aware, there have not been any suicides since you became Financial Secretary to the Treasury, but unless you show some courage and order a different approach and actually engage with those affected, it is alas highly likely that more people will be pushed to take their own life. You and your Treasury colleagues have the power to do so. We urge you to use that power.

It is time that the rhetoric provided to the Ministers is challenged. We urge you to do this and stop believing without serious question what you are being told and to stop regurgitating the same tired rhetoric. We ask will you actually engage with those caught up in this whole scandal, those whose lives have been so damaged by it? Or will you continue to hide behind what you



*must* know to be partial and deliberately misleading propaganda, that demonises ordinary working people who were mis-sold arrangements, whilst cynically ignoring HMRC's own failures and conduct?

If you are serious about being prepared to challenge what you are being told, then you will want to meet with the Loan Charge Action Group and those facing the Loan Charge. We would be happy to do so.

We look forward to your response.

Yours sincerely



*Steve Packham*  
Spokesman & Executive Director



*Andrew Earnshaw*  
Executive Director

*On behalf of the Loan Charge Action Group*