



Loan Charge All-Party Parliamentary Group

Loan Charge Inquiry

April 2019

Final Report

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Summary and key recommendations

The Loan Charge APPG commenced their Loan Charge Inquiry at the end of February and planned three oral evidence sessions and asked for written submissions. The call for evidence received over nine hundred submissions. The Inquiry also included a survey into individuals impacted by the Loan Charge was commissioned and received 1,768 replies.

The Loan Charge Inquiry's key findings can be summarised as follows:

- 1. There is a clear risk to the mental welfare of people facing the Loan Charge, including a known suicide risk and there have already been cases of suicide by people facing the Loan Charge, including one now acknowledged by HMRC**
 - The Loan Charge Inquiry concludes that HMRC's failure to set up a 24-hour counselling helpline staffed by mental health professionals, despite knowing about the clear suicide risk of people facing the Loan Charge, was negligent
 - HMRC have failed to deal with the threat to vulnerable individuals and, in some cases, have breached their own vulnerable customer guidelines
- 2. There will be many bankruptcies as a result of the Loan Charge**
 - Some people will be forced to sell their homes and some people have already sold their homes under the pressure of HMRC's demands
 - Families have already broken up due to the pressure and many more families face breakdown despite the impact assessment by HMRC claiming there would be no effect on family stability
- 3. The original impact assessment published by the Treasury was flawed and inadequate, to the point of being negligent**
 - The original 2016 consultation findings were ignored
 - It is clear that the Treasury have been working to a pattern of pushing through the policy regardless of any and all criticism
- 4. These arrangements were not entered as "aggressive tax avoidance" and were often a condition of employment, especially in the public sector**
 - The vast majority of those who entered these arrangements did so due to the IR35 legislation and in order to avoid the administrative burden of running a limited company
 - The majority of people who knowingly engaged in these arrangements took professional advice and were assured that the schemes were legal and approved
 - A substantial number of people however, especially in the public sector, did not know or understand that their pay arrangements involved loans
- 5. The Loan Charge is retrospective, overrides taxpayer protections and undermines the rule of law**
 - HMRC are pursuing people for tax in relation to closed tax years, including, in some cases, people who have no open tax enquiries for any tax year
 - In some cases, HMRC failed to open enquiries in the permitted time window. In other cases HMRC actually opened an enquiry, then closed it deeming the tax return acceptable, and yet they are now claiming it was not
 - Many people have been given wholly inadequate notice of the Loan Charge. In large numbers of cases which are technically 'open', following the opening of an HMRC enquiry, HMRC has failed to act within what anyone would judge to be a reasonable timescale

- 6. The real reason for the introduction of the Loan Charge was to bypass the normal legal processes and to allow HMRC to collect tax where they were 'out of time' under existing legislation**
 - The evidence, and HMRC's own admissions, show that there was a profound failure on HMRC's part to tackle payroll loan arrangements in the past
 - HMRC sought to rectify this by pushing for the introduction of a retrospective charge which allows them to seek tax that they are no longer able to collect
- 7. There has been a cynical campaign of misinformation waged by HMRC and the Treasury**
 - HMRC have failed to answer questions from parliamentarians openly and honestly
 - There have been no convictions of promoters involved in promoting loan arrangements. HMRC and the Treasury have repeatedly failed to clarify this point, with facts, when queried
 - There has been a substantial volume of misleading information from HMRC and the Treasury with regard to the Loan Charge
 - The Loan Charge Inquiry has concluded that the lack of integrity shown by HMRC officials constitutes a breach of the Civil Service Code, and the Financial Secretary to the Treasury may have broken the Ministerial Code

The key recommendations of the Loan Charge Inquiry are:

- 1. An urgent 6-month delay and suspension of the Loan Charge** with HMRC agreeing to withdraw any payment demands already issued and not to issue any new payment demands
- 2. An Independent Review into the Loan Charge** led by an experienced tax judge to examine the Loan Charge as a policy, the impact on people, the legal justification and recommend whether it needs to be amended or scrapped
- 3. An immediate policy change ahead of the Review to remove 'closed years' (also known as 'unprotected years') from the scope of Loan Charge entirely** and any required so-called 'voluntary' settlements (that are not voluntary) that may be necessary to avoid the Loan Charge on such tax years
- 4. A return of taxpayers' statutory rights to defend against HMRC's enquiries into any 'open years'** in a tax tribunal or court under the law, as the law was at the time of the transactions
- 5. For Treasury Ministers to change policy and instruct HMRC to offer the option of a 10% full and final settlement rate on any open/protected years for any taxpayers who wish to simply draw a line under the past and move on with their lives**
- 6. The ending of the application of late payment interest rates, on any tax demands relating to tax years before 2015/16**
- 7. An automatic 10-year time-to-pay (TTP) for all taxpayers, without reference to income levels and with reasonable interest rates applied**
- 8. An urgent 24-hour counselling helpline for those facing the Loan Charge**
- 9. The Loan Charge Inquiry backs the recommendation of the House of Lords Economic Affairs Committee (EAC) for a new 'Powers Review' into HMRC and to make changes to make HMRC more accountable**
- 10. The Loan Charge Inquiry also believes there must also be an independent investigation into the conduct of HMRC with regard to the Loan Charge (separate to the wider independent review into the Loan Charge), with the possibility of taking appropriate disciplinary action against any and all HMRC staff who have knowingly been involved in misrepresentation of information, misinformation and failing to properly assess the expected impact of the Loan Charge policy**
- 11. There must also be a proper independent assessment of HMRC's use of behavioural psychology and behavioural insights, the knowing use of which should be suspended in the light of the suicide risk and the known suicides of individuals facing the Loan Charge.**

1. Introduction

1. The All-Party Parliamentary Loan Charge Group (Loan Charge APPG) was established to bring together cross-party parliamentarians from both Houses of Parliament, who have concerns about the nature and impact of the '2019 Loan Charge', which will come into force on the 5th April 2019.¹

2. The Loan Charge APPG is clear that people should pay the right amount of tax and we believe the Government should clamp down on tax evasion and properly resource HMRC to do this. We also believe that the Government should prospectively close any loopholes that allow for unacceptable avoidance. However there is increasing concern about the Loan Charge in terms of its fairness and impact and the purpose of the Loan Charge Inquiry is to look into this.

3. The Loan Charge Inquiry commenced on 6th February 2019 and has undertaken a detailed examination of the 2019 Loan Charge, both in terms of the policy and its impact.

4. The APPG inquiry examined the following areas:

- Background to the Loan Charge legislation and why people came to use loan based arrangements
- Taxpayer protections and the scope of existing HMRC powers as they apply to the Loan Charge
- The extent to which case law justifies the Loan Charge and its impact upon current legislation and statutory taxpayer protections
- The Loan Charge calculation; how HMRC has arrived at this and the extent to which promoters' fees and the tax implications for organisations who used those facing the Loan Charge are informing the level of the charge
- The impact of the Loan Charge on individuals: the level of liabilities and how the Loan Charge will affect their financial situations, their lives, families and their career
- HMRC correspondence with those affected including the timeframe in which people have been informed about their liabilities and the feasibility of any arrangements being proposed for repayment; HMRC's treatment of promoters of the arrangements

¹ [government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans](https://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans)

5. Following the call for evidence, we received over nine hundred written submissions, many from individuals who are facing devastating and life-changing consequences should the Loan Charge come into force as planned. We also conducted a survey of those who were directly involved in Loan Arrangements between 1999 to the present. We sought respondents through the APPG website and via its social media platforms, where users were also encouraged to share the survey link with other eligible respondents. Within a ten-day period, 1,768 participants took part in the survey from 25th February 2019 to 6th March 2019.²

6. There were three oral evidence sessions planned for the Loan Charge Inquiry:

- Wednesday 13th February with advisers
- Wednesday 27th February with people facing the Loan Charge
- Tuesday 5th March with the Financial Secretary to the Treasury, Mel Stride MP and HMRC

7. We were unable to hold the final evidence session because HMRC declined the invitation to attend, as did the Financial Secretary to the Treasury, Mel Stride MP.

8. The Officers of the Loan Charge APPG are as follows:

- Rt Hon. Sir Ed Davey MP, Chair, MP for Kingston and Surbiton (Liberal Democrat)
- Ruth Cadbury MP, Vice-Chair, MP for Brentford and Isleworth (Labour)
- Ross Thomson MP, Vice Chair, MP for Aberdeen South, (Conservative)
- Rt. Hon. Baroness Kramer, Vice-Chair, (Liberal Democrat)
- Liz Twist MP, Vice-Chair, MP for Blaydon (Labour)

- The full list of APPG members can be found here:
<http://www.loanchargeappg.co.uk/members/>

9. The Secretariat of the Loan Charge APPG is Sabina Mangosi: contact@loanchargeappg.co.uk

² The Loan Charge Inquiry Survey Report

2. The rise of loan based remuneration arrangements

IR35

10. In 2000, the Labour government introduced legislation now known as 'IR35', which targeted perceived tax avoidance by companies using contract workers who were in fact 'disguised employees'. These contractors provide services to clients via an intermediary and might otherwise be considered an employee for tax purposes if the intermediary was not involved.³ IR35 placed additional tax liabilities on genuine freelancers and contractors, including employer's National Insurance Contributions (NICs). As a result, many genuine contractors faced the risk of tax bills that exceeded those of any Pay As You Earn (PAYE) employees, whilst having none of the associated benefits and protections under employment law. This is a situation that continues even today.⁴

11. The legislation has been widely criticised for its complexity. A report by the House of Lords Select Committee on Personal Service Companies (PCs) concluded that HMRC had failed to demonstrate that the revenue protection claimed for the IR35 legislation outweighed the costs it imposed on the freelancers and contractors to whom it applies.⁵

12. We have seen evidence that IR35 investigations are viewed as highly disruptive and expensive for contractors, even if HMRC's accusations that the contractor is a disguised employee are subsequently found to be groundless. Indeed, even an investigation by HMRC into IR35 status is costly and disruptive. A market has thus developed over the subsequent years to provide insurance against this risk, including loss of earnings due to the process of gathering evidence to defend against HMRC's accusations.⁶

Loan based remuneration arrangements

13. The regulatory complexity and the disproportionate cost burden of IR35 led many freelancers and contractors to enter into loan based remuneration arrangements with umbrella companies to prevent them from inadvertently breaking IR35 rules.

³ <https://www.gov.uk/guidance/ir35-find-out-if-it-applies>

⁴ <https://www.telegraph.co.uk/tax/self-employed/freelancers-could-face-higher-taxes-no-holiday-sick-pay-government/>

⁵ House of Lords Select Committee on Personal Service Companies, Report of Session 2013–14

⁶ <https://www.qdoscontractor.com/ir35/ir35-insurance>

14. Common examples of loan arrangements include Employee Benefit Trusts (EBTs) and Employer Financed Retirement Benefit Schemes (EFRBSs), where in addition to PAYE salary, a proportion of overall contract earnings is received as a loan or some other non-taxable distribution. Some of the loans would require interest paid or Benefit in Kind tax paid. They may
 5 or may not have required Self-Assessment declaration of loan amounts and Benefit in Kind on P11Ds, according to loan arrangement structure and compliance with legislation in force at the time. We have heard from large numbers of risk-averse individuals whose decision to use a loan arrangement was driven primarily by the desire to avoid the complexity and uncertainty of IR35, rather than the avoidance of correct tax due:

10 [...] if I hadn't gone down this route I would have set up a limited company and what ended up in my pocket at the end of the day was more or less the same because I was with a scheme called AML and they were taking—I think their fee was about 18 percent, or something. So it's not like all I've sort of paid is a tiny bit of, you know, income tax and
 15 National Insurance, the fee to them was quite considerable. So it didn't really seem too good to be true other than the fact that I didn't have to worry about IR35 and the admin and that side of it. That was the bit that attracted me, what I personally got in my bank account each month, comparable.⁷

The role of advisers and intermediaries

15. The complex nature of tax regulation leads many freelancers and contractors to rely on the
 20 advice of tax professionals to make decisions on how to receive their income. The evidence to our inquiry supported this; the vast majority of people entered into loan based remuneration structures in accordance with professional advice.⁸

16. A witness, who worked in financial services, highlighted how the esoteric nature of tax
 25 legislation made it very difficult for anyone without tax expertise to understand the specific details of loan based remuneration arrangements:

I work in the financial sector, I'm FCA registered so I consider myself to be reasonably competent in that, but the particular area that we're dealing with here, these loans and pension provision, is a very specialist area and therefore I would take the advice of
 30 specialists in this area, which is what I did. I did that in good faith [...] all of us here are doing things which we were advised to do and we believed to be both legal and proper at the time and we still believe them to be legal and proper.⁹

17. The Loan Charge Inquiry was particularly concerned by the testimony of some witnesses, who explained that they had entered into an arrangement on the advice of a third-party recruitment

⁷ Loan Charge Inquiry, Oral evidence session, 27 February 2019, p. 15

⁸ Ibid. p. 13

⁹ Ibid, p. 17

agency, or their end client/employer.¹⁰ One witness who had been affected by the Loan Charge worked as a freelancer for HMRC and outlined the role her recruiter played in the decision making process:

5 I was told by the agency, well, you might want to investigate going through an umbrella company, which at the time, even the word umbrella, I'm like, what is an umbrella company? [...] So I made the switch that way, without really understanding that there was a loan agreement behind it [...] for me it was sort of, I was nudged in that direction as being a safer route.¹¹

10 18. We received a written submission from a social worker, who told us the recruitment consultant advised:

[...] that she had a great umbrella company to recommend and that lots of her colleagues and locums were recommending and using them. I had no reason to mistrust my consultant [...] and said that I would chat to them, within minutes I had [a call] from SmartPay advising that [the recruitment consultant] had passed my contact details on.

15 He spoke in detail about how the tax loophole was legitimate and that [SmartPay] were HMRC and IR35 compliant. I asked a number of times how this could be compliant, and was keen to know that I 'was paying my bit' [...] I am now concerned that [the recruitment consultant] was in fact financially benefiting from a referral bonus when signposting contractors to SmartPay.¹²

20 19. A locum doctor told us that the NHS Trust he worked for had encouraged him to join:

Some of the trusts I work with, they knew exactly what was going on, in fact, they actually would encourage us to go via the umbrella route. They'd come to me and say, [name redacted], listen. If you're going to go PAYE with these guys, I can only pay you so much. If you're going to go via the umbrella, I can pay you so much more.¹³

25 20. We also received written testimony from a nurse who sought additional agency work and was then not given a choice about how they could be paid:

I am a nurse. I've worked since qualifying in 2003. I am also an agency nurse and work on a week to week basis with no contract or guaranteed hours. [...] the agencies I worked with used umbrella companies and I had no option but to use them in order to work.¹⁴

30 21. The statements of witnesses and the written evidence were further corroborated by the Loan Charge Inquiry's survey of 1,768 individuals. This survey showed that the vast majority of respondents learned about loan based arrangements via professional advisers or promoters:¹⁵

¹⁰ Ibid, p. 51

¹¹ Loan Charge Inquiry, oral evidence session, 27 February, p.7

¹² Loan Charge APPG, oral evidence session, 27 February, 2nd private session

¹³ Loan Charge Inquiry, Oral evidence session, 27 February 2019, p. 51

¹⁴ URN DD013

Table 1: The Loan APPG Survey results Q9

<i>Who recommended that you use the Loan Arrangement? (Please Tick all that Apply)¹⁶</i>	
Promoter of the Loan Arrangement	41.6 percent
Accountant or other Professional Adviser	36.8 percent
Family member/Friend/Colleague	30.8 percent
Job Agency	11.7 percent
Employer/End client	8.4 percent
No one. I was unaware that I was in a Loan Arrangement	6.4 percent
Other	1.8 percent

22. Dave Chaplin, CEO of Contractor Calculator, provided written evidence claiming that the agencies were actively promoting loan arrangements as they provided the largest commissions to the agencies¹⁷:

Agencies had preferred suppliers lists (PSLs) and those offering the highest kickbacks got recommended the most. The loan schemes would have had a much bigger commission pot than any standard payroll mechanism, pushing them to the top of the recommendation lists.

23. **The evidence to our inquiry suggested that large numbers of people entered into loan based remuneration arrangements on the advice of tax/other professionals, or their recruiters. Critically, they did so to avoid the interface with highly complex regulation – not to avoid the payment of tax. Furthermore, our evidence suggests that substantial numbers of people, including public sector workers, did not know or understand the details of the arrangements, or that they involved loan payments – but were assured by advisers and third parties that the arrangements were entirely legal.**

¹⁵ The Loan Charge Inquiry Survey Report, Q5 *What sector do you work in? Q9*

¹⁶ Participants were offered the opportunity to make several choices to provide additional evidence on how and why participants were entering into Loan Arrangements. Please note, that the percentages do not add up to 100 per cent because multiple options were offered.

¹⁷ Professional Submission – Chaplin D

24. Professional advisers reassured users that arrangements were HMRC compliant and QC approved. We heard from social workers, doctors and IT contractors who, having paid for expert advice, had the reasonable expectation that their decision to enter a loan arrangement was legitimate and within the law. If this is not the case, this amounts to mass mis-selling and the Government should respond to this accordingly.

25. It is inconceivable that HMRC should adopt such an aggressive approach to individuals who accessed a legal arrangement, on the basis of professional advice, or at the recommendation of their employer. The inference is that those individuals should have knowledge of taxation law, beyond the scope of professional advisers – and beyond the scope of the law as it stood at the time of entry. This is unrealistic, unfair and amounts to a wildly unreasonable expectation of taxpayers.

26. The Loan Charge Inquiry was alarmed to receive evidence that recruitment agencies may have received incentives from promoters for introducing individuals to arrangements. We ask HMRC to investigate these claims and take action, where appropriate, against these organisations and individuals.

Promoter conduct

Transparency

27. Witnesses to the Loan Charge inquiry told us that, alongside assurances that the loan arrangements were HMRC compliant, the contracts they signed with umbrella companies did not necessarily state that an element of remuneration would be paid in the form of a loan:

[...] in all six pages [of the contract] there is no mention of the word 'loan'. The only thing it says is I will be paid only in such manner and at such times as will be in the opinion of an accountant for this purpose appointed by the contractor to maximise the net benefit to the contractor after the discharge of tax and other business attributable thereto. That does not sound dodgy, that does not sound too good to be true.¹⁸

Fees

28. The Loan Charge Inquiry heard from witnesses that, in order to enter a loan based arrangement, individuals had to pay high fees, often in the range of 16-18 percent.¹⁹ In return for fees, users were told they would have access to payroll, accountancy services (including the

¹⁸ Loan Charge Inquiry, oral evidence session, 27 February 2019, p.16

¹⁹ Ibid, p. 35

completion of tax returns on their behalf) and legal advice, if required. Alongside this, they would have the reassurance that all tax laws had been complied with. As one witness told us:

5 I think what we thought we were paying for was the fact it was 100 percent HMRC compliant, hassle-free, easy sign-up, fully dedicated manager, great service, thirty-year track record. That is probably what we thought we were paying for. Experienced legal team available.²⁰

29. Other witnesses explained that they expected tax payments to come out of the promoter fee:

I took the view they pay tax on that as well, or some portion of it. That was how it was conveyed to me. Obviously, I didn't know what tax, if any, was paid.²¹

10 30. Promoters charged significant fees, a cost that individuals were prepared to absorb in order to remove the administrative burden of complying with IR35. A number of witnesses to the Loan Charge Inquiry explained that high fees resulted in their monthly income being comparable to the level they would have received if they had instead operated a PSC and used the normal method of PAYE/dividends. For these people, tax avoidance for personal financial gain was clearly not a
15 driving incentive, which we would argue makes HMRC's approach to the Loan Charge all the more punitive.

Investigating promoters

31. In a letter to the Loan Charge APPG, Ruth Stanier, Director General of Customer Strategy and Tax Design, HMRC, told us that they have investigated over 100 promoters and others involved in
20 tax avoidance, leading to more than 20 convictions since April 2016.²² It was unclear from the letter how many, if any, of these investigations or convictions were specifically in relation to the promotion of loan based arrangements. This lack of clarity was promulgated further by the Financial Secretary to the Treasury, when he failed to address a related question in the House of Commons. When asked by the Member for Morley and Outwood how many promoters had been
25 prosecuted, his response did not address the question, instead he replied that:

HMRC has used its powers under the Promoters of Tax Avoidance Schemes (POTAS) legislation to challenge promoters and made three successful complaints to the Advertising Standards Authority about misleading advertising; two of which relate to disguised remuneration schemes.²³

²⁰ Ibid. p. 35 - 36

²¹ Ibid. p. 35

²² Letter to Rt Hon Sir Edward Davey MP, Chair of the Loan Charge All Party Parliamentary Group from Ruth Stanier, Director General of Customer Strategy & Tax Design, HMRC, dated 6 March 2019

²³ HC Deb, 13 March 2019, cW

32. However, the Loan Charge Inquiry was sent a copy of a Freedom of Information request, which stated that HMRC has taken litigation against just:

5 six scheme promoters for failure to disclose under the Disclosure of Tax Avoidance Schemes regime. One case has been decided in HMRC's favour with decision in the other five pending.²⁴

33. The Chair of the House of Lords, Lord Forsyth of Drumlean, has been highly critical of the Minister's conduct in respect to enquiries surrounding prosecutions of promoters. In an interview the Financial Times on 18th March 2019, Lord Forsyth accused the Financial Secretary to the Treasury of not fulfilling his "first duty to Parliament", and the Loan Charge APPG agrees. Lord
10 Forsyth has concluded that:

 Ordinary people are being ruined – these are not fat cat people advised by financial lawyers [...] Parliament has a duty and a responsibility to deal with this. The Treasury and the Chancellor have been tin-eared and have just turned a blind eye to what is happening.²⁵

34. **It is apparent, from the evidence sent to the Loan Charge Inquiry, that HMRC was aware of
15 the existence of promoters. The APPG therefore concludes that it is highly likely that HMRC was cognisant of the assurances that umbrella companies made to individuals with regards HMRC and QC approval of the arrangements on offer.**

35. **Despite this, HMRC has chosen to disproportionately penalise those who entered into loan agreements, as opposed to the umbrella companies that offered them. Furthermore, HMRC
20 has been disingenuous in its responses to queries relating the investigations and convictions of promoters. We now know that the '100' figure does not relate to Loan Charge, this is a global figure for tax avoidance investigations. Instead, HMRC has taken litigation against only six promoters of Loan Charge arrangements.**

36. **It is clear to the APPG that HMRC is failing to tackle the Loan Charge at source, and instead
25 has chosen an easy target amongst individuals who were effectively mis-sold an arrangement. Furthermore, the Financial Secretary to the Treasury has frustrated the process of Parliamentary scrutiny time and time again. By failing to answer questions honestly in the House of Commons; we believe the Minister has now breached the Ministerial Code. The Minister must be held accountable for this breach and should also be investigated for the
30 appalling obfuscation by HMRC information pertaining to the Loan Charge more broadly.**

²⁴ Letter from Head of Freedom of Information Team, HM Revenue and Customs, Ross Sutherland to Terna Waya, Informations Commissioner's Office, 27 February 2019

²⁵ Tory peer urges 'tin-eared' Treasury to rethink Loan Charge (18 March 2019)

Profile of those affected by the Loan Charge

37. With the passing of the Finance (no.2) Act 2017, the Government introduced a Loan Charge on all employment-related loans made since 1999. It has the effect of being a 45 percent non-refundable charge on all loans advanced during this period, unless the individual agrees to pay upfront a figure calculated by HMRC, regardless of whether any such tax was legally due at the time.

38. The charge is effective from 5th April 2019: anyone who has ever been employed through such a structure will face a retrospective charge in the 2018-19 tax year which is payable by January 2020. On 22nd November 2017, HMRC published its impact assessment of the Loan Charge. The document states that:

The disguised remuneration package is expected to affect up to 40,000 individuals who have entered into disguised remuneration avoidance arrangements. This measure will also affect individuals who are self-employed and trading on their own account or through a partnership and have entered into disguised remuneration avoidance arrangements. The measure is expected to affect up to 10,000 self-employed individuals who have entered into disguised remuneration avoidance arrangements.²⁶

39. The number of those affected is disputed by the Loan Charge Action Group, which has estimated that closer to 100,000 people will be affected.²⁷ In a letter to the Loan Charge APPG, Ruth Stanier, Director General of Customer Strategy and Tax Design, HMRC, told us that HMRC data:

indicates that around 65 percent of contractors affected work in the business services sector, for example as management consultants and IT consultants; 10 percent work in construction, and 3 percent in medical services or teaching.²⁸

40. HMRC did not disaggregate the percentage of business service contractors into those working in the public or private sector, or provide any details of income levels. However, of the Loan APPG's own survey of people affected by the Loan Charge, 14.2 percent of respondents worked in the public sector and 85.8 percent worked mostly in the private sector.²⁹

41. The APPG Inquiry received compelling evidence – both oral and written – of key public sector workers who are impacted by the Loan Charge: social workers, locum doctors, nurses, carers, and NHS employees.

²⁶ <https://www.gov.uk/government/publications/disguised-remuneration-further-update/disguised-remuneration-further-update>

²⁷ https://www.hmrcloancharge.info/2019_loan_charge_briefing/

²⁸ Letter to Rt Hon Sir Edward Davey MP, Chair of the Loan Charge All Party Parliamentary Group from Ruth Stanier, Director General of Customer Strategy & Tax Design, HMRC, dated 6 March 2019

²⁹ The Loan Charge Inquiry Survey Report, Q5 *What sector do you work in?*

42. The Loan Charge will have, and is having, a disastrous impact on key workers. Many of these individuals are employed via agencies and must operate via 'recommended' umbrella companies as a condition of engagement.

5 Everybody in [name redacted] Council is employed through the same agency because [the council] only use HCL, which is the agency that I work for. So we are all in the same boat, every single one. [...] HCL are the company that provide all of [the council's] agency staff, locum staff, both in children's services and adult services.³⁰

43. It has become very apparent that the numbers proposed by HMRC of how many public sector workers will be impacted by the Loan Charge are untenable. The APPG's survey also substantiates
10 our view that HMRC's assessment figures are seriously flawed. Details from the APPG survey indicate that 3.8 per cent of impacted individuals work in the health service; 2.1 per cent in local government; 1.5 per cent in education; 1 per cent in social work.³¹

15 [The number of social workers has] got to be in the high maybe 200s to 300s, at least, because I've been a manager for [the Trust] and so, for example, last year I was managing a team of 11 people altogether, eight of them were agency staff, and they were all employed through HCL. They were all using the umbrella companies. And that was just one team. We have three areas in [the region] that we recruit to and each of those areas has probably seven long-term teams, three or four intake teams for looked after children's teams. So if
20 you start to add that up and average it out, and that's just in children services, it's got to be in the 200s, 300s—³²

I've got colleagues as far down as Cornwall, you know, old colleagues that I've spoken to, that are dealing with it as far down as Cornwall. I'd imagine most local authorities that employ agency staff, those agency staff are going to be paid in this way

25 [...] the agencies make you sign up to an umbrella company. So it's got to affect - in terms of social work, and it's not just social workers, it's team managers, it's family support workers, it's throughout the whole kind of, you know, structure. It's going to be thousands. It's got to be thousands and thousands of people.³³

30 **44. It is clear that the Loan Charge affects people in many different sectors, with very different roles and different levels of income, different ages and at different stages of their career. The one unifying factor is that the vast majority will be detrimentally affected by the Loan Charge.**

³⁰ Loan Charge APPG, oral evidence session, 27 February, 2nd private session

³¹ The Loan Charge Inquiry Survey Report, Q5 *What sector do you work in?*

³² *ibid.*

³³ *ibid.*

[My colleague] ended up in hospital last year over it, you know, she's really struggling. [...] We work in child protection, you know, sometimes you can't put that down [...], we deal with the safeguarding of children and families in one of the most vulnerable positions. I know that one of my colleagues has paid [settlement]. [...] she sold her car to be able to pay the bill and took loans from her parents to buy a little run-around that she can use to get back to work, to and from work. I've another colleague who - she's actually taken out a loan, just like a personal loan to pay it, that she is now having to pay back. And I heard of one person who sold their house, and that what I'm most scared of, I can't lose my house, I just can't lose my house. That's the only thing that keeps me sane.³⁴

I was living well within my means before this happened, but I will find it devastating because pretty much it will take all my savings and then some.³⁵

There are no benefits [to working to working through an umbrella company]. The salary is the only benefit. I don't know about you, but I don't get sick pay, I don't get holiday pay [...] I don't have a pension. I still don't have a pension. I know I need to get that sorted, but that's what I mean, you know, it's not like I'm sat here living large - I have nothing at the end of each week.³⁶

45. The evidence from the Loan Charge Inquiry survey shows that the impression given by HMRC and the Treasury, that those affected are predominately people on high incomes, is simply not the case and rather that this seems a way of demonising them and reducing the sympathy of MPs and journalists towards them.

Informing taxpayers of the Loan Charge

46. Many of the submissions we received suggested that taxpayers were only notified of the Loan Charge in late 2018, with some being contacted in 2019, and this was supported during our evidence sessions. A professional adviser told us:

It wasn't until a number of months ago, in fact, where people got a standard letter detailing the Loan Charge and it was issued indiscriminately to any individual who was employed by a company that may have undertaken a disclosed, in my view of tax, a disclosed tax avoidance arrangement. I got one myself; I have participated in tax strategies. So I know it came in September as a standard letter and I'm happy to forward a copy to you.³⁷

³⁴ Loan Charge APPG, oral evidence session, 27 February, 2nd private session

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ Loan Charge Inquiry, oral evidence session, 13 February 2019, p.12

47. The evidence sent to the Loan Charge shows that people had been given wholly inadequate notice of the Loan Charge, from September 2018 and even later. It is unacceptable that HMRC should have provided such short notice to individuals affected, particularly given the life-changing consequences that many people now face.

3. Taxpayer protections and HMRC powers

Existing taxpayer protections and HMRC powers

48. The general overriding law regarding taxpayer protections is found in Section 9 of the Tax Management Act 1970. This states that when a tax return is submitted to HMRC a 12-month window will be opened, within which, if they wish to enquire into the return, HMRC must inform the taxpayer.³⁸

49. We have heard from tax experts that the Loan Charge is not necessary; HMRC's existing powers are sufficient to collect tax where it is due. One tax adviser wrote to us and concluded that:

10 The Loan Charge is designed to punish the individuals and collect £800m from approximately 50,000 individuals covering a 20 year period on a basis that has not been shown to be correct in law. Indeed the argument that loans are taxable has been consistently defeated in Court. HMRC are seeking revenge for those defeats. We have heard it from more than one source "Doves & Hawks", "Punishment Strategy", "Make it Real". I believe that there are some within HMRC who want to see 'tax avoiders' suffer.³⁹

Informing taxpayers of a tax return enquiry

50. The Loan Charge Inquiry was surprised to learn that there is no standardised format used by HMRC to alert taxpayers to an enquiry into a tax return. Furthermore, we heard that HMRC correspondence on this matter is not required to provide a reason for the enquiry, nor must it inform individuals of their right to seek closure of an open enquiry.⁴⁰

51. This is contrary to the approach taken by other government departments, such as the Department for Work and Pensions (DWP), where DWP decision makers responsible for determining eligibility for benefits are required to inform claimants of both the reasons for a particular decision and of that person's right to appeal.

25 52. By withholding this information, HMRC has failed in its duty of care to those taxpayers who, unaware of their right to request closure, have not done so. These individuals now face a much greater retrospective penalty, in a single tax year, than may have otherwise been the case.

³⁸ Section 9A of the Taxes Management Act 1970 (TMA 1970)

³⁹ Email 19 March from Gordon Berry to APPG

⁴⁰ Loan Charge Inquiry, oral evidence session, 13 February 2019, p. 10

53. The Loan Charge Inquiry also received damning evidence of HMRC repeatedly failing in its duty of care to taxpayers:

- By failing to act within reasonable time frames, HMRC is culpable for the accumulation of Loan Charges that are far greater than would otherwise have been the case. For HMRC-protected enquiry 'open years', this includes accumulated daily interest for many years of HMRC inactivity, through no fault of the taxpayer. HMRC has been negligent in their duty of care to inform the taxpayer of their statutory right to request enquiry closure
- By pursuing individuals with 'closed' years, HMRC is undoubtedly taking a retrospective approach to tax payments; this is an unprecedented act which risks significant ramifications for business planning in the future
- HMRC has contributed to levels of stress and anxiety that are literally ruining the lives of individuals affected by the Loan Charge. This is exacerbated further by the tactics the department has taken to push individuals towards settlement

54. The APPG concludes that an independent investigation is required into the conduct of HMRC in relation to the Loan Charge. We believe there is evidence of intentional obfuscation and misinformation by senior officials; if this is found to be the case we call upon the government to take serious action, including dismissal where appropriate.

Disclosure of Tax Avoidance Scheme (DOTAS)

55. In 2004, the Finance Bill introduced DOTAS – Disclosure of Tax Avoidance Scheme.⁴¹ This is a way of informing HMRC that individuals have used a specific tax arrangement. Where an individual declared DOTAS on their tax return, HMRC would not be able to claim a 'discovery' after its submission. Scheme Registration Numbers (SRNs) were also assigned by HMRC for many new EBT-based loan arrangements.

56. The Loan Charge Inquiry evidence sessions heard evidence from a number of witnesses highlighting issues around the DOTAS declaration:

⁴¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701190/DOTAS-March.pdf

- As part of a loan based arrangement, many umbrella companies completed the tax returns on behalf of the individual. These individuals were often unaware of DOTAS and the implications of declaring it, or not, on their tax return.⁴²
- Other people were aware of DOTAS, and the fact that it applied to their arrangement, but were reassured by the umbrella company that a DOTAS declaration demonstrated the arrangement's legitimacy and would protect individuals from HMRC enquiries.⁴³
- We were told by advisers that the absence of a DOTAS declaration did not automatically indicate that an individual had wilfully withheld their involvement in a loan based arrangement from HMRC. Some people may have been part of a "less honourable" arrangement, which was not DOTAS registered, and did not provide its members with a DOTAS number.⁴⁴ Others may have been part of an arrangement before the introduction of DOTAS in 2004 and were unaware that this was no longer compliant.⁴⁵
- We heard evidence from advisers to suggest that some individuals, who completed a DOTAS declaration and included their SRN on the tax return, were now being pursued by HMRC outside of the 12-month window, despite advisers' expectation that a DOTAS declaration would prevent HMRC from making a discovery.⁴⁶

57. DOTAS was clearly used by some promoters to indicate legitimacy of the arrangements and we received written evidence of this too⁴⁷:

My then chartered accountant advised me the scheme had approval from HMRC and had a registration number (DOTAS Number) [...] HMRC notified me (in writing just once) about the loan charge on 24/5/18, less than 1 year before the loan charge.

58. We received considerable evidence of individuals asking promoters about DOTAS and being provided with reasonable explanations as to why the arrangements were not captured by the DOTAS rules. The promoter's stance was often backed by legal opinions from QCs, stating that DOTAS did not apply due to the specific facts of the arrangements. Taxpayers are not tax experts, nor should they be expected to be. It is reasonable that individuals, who have received legal

⁴² Loan Charge Inquiry, oral evidence session, 27 February 2019, p. 25

⁴³ Ibid p. 27

⁴⁴ Loan Charge Inquiry, oral evidence session, 13 February 2019, p. 42

⁴⁵ Ibid

⁴⁶ Ibid p. 15

⁴⁷ URN DD002

assurances, should conclude that they have complied with their legal requirements, despite not disclosing under DOTAS.⁴⁸

59. A tax expert made very clear to us that the individual cannot be regarded as at fault:

5 the only taxpayer who has actually done something wrong is one who has been provided with the DOTAS number and failed to include it on his or her tax return⁴⁹

60. The DOTAS legislation defines what arrangements have to be disclosed. If an arrangement does not meet the definitions in the legislation, then they do not have to be disclosed. We have received written testimony from individuals, who were told very specifically by advisers that the arrangements they agreed to did not need to be disclosed.⁵⁰

10 61. HMRC has claimed that they have investigated over 100 promoters over disputed non-disclosure under the DOTAS rules.⁵¹ Only five cases (sometimes described as ten individuals) appear to have been taken forward, with only one being decided in HMRC's favour so far. We conclude that there is little evidence that promoters taking a view that an arrangement should not be disclosed DOTAS means that anything has been deliberately hidden from HMRC. If HMRC's
15 interpretation is that the law requires disclosure, then the department should prosecute – however, HMRC has not done so for at least 90 percent of the cases they are aware of.⁵²

62. **The Loan Charge Inquiry conclusion is that the Disclosure of Tax Avoidance Scheme (DOTAS) declaration, as it applies to the Loan Charge, is not fit for purpose. We heard from individuals who did not submit a DOTAS declaration because their arrangement was not registered, or
20 because their return was submitted by an umbrella company on the individual's behalf. HMRC's efforts to challenge arrangements that did not declare under DOTAS appear to be occurring far too late.**

63. The DOTAS rules were drafted to capture only certain arrangements, which met a number of hallmarks. It is legitimate for a taxpayer to have taken a view that the DOTAS rules did not apply,
25 when they have been reassured of this fact by promoters. It is not acceptable that HMRC is pursuing individuals who entered such arrangements in good faith. HMRC resource should focus entirely on those promoters who miss-sold the arrangements in the first place.

⁴⁸ Loan Charge Inquiry, oral evidence session, 13 February 2019, p. 22

⁴⁹ Loan Charge Inquiry, oral evidence session, 13 February 2019, p. 43

⁵⁰ URN DT001, DT002, DT003, APSE info

⁵¹ Letter to Rt Hon Sir Edward Davey MP, Chair of the Loan Charge All Party Parliamentary Group from Ruth Stanier, Director General of Customer Strategy & Tax Design, HMRC, dated 6 March 2019

⁵² <https://threadreaderapp.com/thread/1086011650535288833.html>

64. There are other individuals, who followed the HMRC process by submitting a DOTAS and a Scheme Registration Number (SRN), who will face a Loan Charge for years that should have been outside the 12-month window for HMRC discoveries.

65. **The lack of clarity around DOTAS, the failure of HMRC to better communicate the implications of making a DOTAS declaration – alongside the inconsistent treatment of individuals who made a DOTAS declaration on years outside of the 12-month discovery window – demonstrate the shambolic way in which HMRC has prepared for the introduction of the Loan Charge in April 2019. This reinforces the Loan Charge APPG’s call for a postponement of its introduction and the commencement of a much needed independent review.**

10 Open enquiries

66. A tax year with an open enquiry is often referred to as ‘open year’. An alternative (interchangeable) term used is ‘protected year’. This is because, from HMRC’s perspective, any disputed revenue beyond what has been declared on the respective tax return is considered protected whilst the open enquiry continues.

67. There is currently no obligation on HMRC to close an open enquiry. Indeed, there is no maximum time frame in which an enquiry must be completed. As a result, enquiries into tax affairs may remain open indefinitely, greatly diminishing taxpayers’ certainty as to the tax due, or indeed any tax that may have been overpaid. The House of Lords Economic Affairs Committee rightly concluded that HMRC had failed:

[...] to progress those enquiries which were opened into individuals’ tax affairs, depriving them of certainty even in situations where they were actively seeking to engage with HMRC to finalise matters.⁵³

68. We heard from advisers who explained that, without professional advice, people would be unaware of their right to request the closure of an open enquiry:

[...] there is absolutely nothing on that letter telling a taxpayer his or her right to seek closure. So it’s only someone who goes to [an] adviser who will say, wait a moment, enough is enough, you should go and seek closure.⁵⁴

⁵³ *The Powers of HMRC: Treating Taxpayers Fairly*, House of Lords Economic Affairs Committee, 4th Report of Session 2017-2019, 4 December 201881

⁵⁴ Loan Charge Inquiry, oral evidence session, 13 February 2019, p. 11

69. Witnesses affected by the Loan Charge confirmed this, and worse. We spoke to one individual who had tried to obtain closure of an enquiry⁵⁵ and others who had applied for closure but had received no response from HMRC:

5 [I was advised to] apply for closure notices for these two years, which I did, and I have never received anything from HMRC. And then the next thing I know is, look, you are going to have to register and settle or enter into another arrangement. That was it for my open years. So we had been cooperating with them, it looked like some things were happening. We've applied for closure notices and then absolutely nothing.⁵⁶

10 Every time I log into my income tax portal, or whatever, I have this amount, I think it's £16,000 is just looming there and has been there since I've been trying to get them to close this year. The only way that they will change it is to ask me for more information, more information, and more, and I give them everything and it's never enough. So it's just sitting there.⁵⁷

70. We heard from a number of witnesses, who described the stress and anxiety caused by the unlimited time frame allowed for open cases. The prospect of the Loan Charge compounded these anxieties further, by eliminating taxpayers' statutory rights to defend their actions in a tax tribunal or court:

20 I started receiving letters from HMRC stating that we're going to open an enquiry into your tax returns. Nothing was ever done about that, they were never closed; they were all open. [...] They left them open all that time. [...] For me, the Loan Charge takes away any chance I have to prove that these arrangements were legal. So the effect it has on me, and sorry, you can see I'm getting emotional now, is that I've had six or seven years of brown letters coming through constantly, constantly, constantly. I dread coming home every night. And my family can't, you know, my whole family, the way it works, is just breaking down.⁵⁸

25 71. A number of witnesses described their experience of an open enquiry as an effective echo chamber, in which they would respond to HMRC requests for information, only to receive identical requests weeks or months after original responses were sent.⁵⁹ We spoke to professional advisers, who suggested that the lack of HMRC response was a consequence of insufficient resources and this was also a key reason why HMRC kept enquiries open for such
30 protracted periods.⁶⁰

72. As stated at the beginning of our report, the Loan Charge APPG does not dispute the legitimacy of HMRC recovering tax that is legally due and we support efforts to identify tax

⁵⁵ Loan Charge Inquiry, oral evidence, session, 27 February 2019, p.21

⁵⁶ Ibid, p.30

⁵⁷ Ibid

⁵⁸ Ibid, p.19

⁵⁹ Ibid. p. 22

⁶⁰ Loan Charge Inquiry, oral evidence session, 13 February 2019, p. 31

planning arrangements and close loopholes in legislation. However, we also believe that HMRC has a duty of care to taxpayers, who should be treated fairly and with due regard for their statutory rights. In the case of open enquiries, we believe that HMRC has repeatedly failed to act within reasonable timescales. Using the Loan Charge as a solution to address this failure will cause significant hardship to those affected.

73. The evidence shows that HMRC has failed to treat fairly those who followed HMRC procedure and requested closure of an enquiry. It is unacceptable that people responded to HMRC requests for information, and subsequently exercised their right to request closure, but then received no response from HMRC in return. The Loan Charge APPG can only conclude that HMRC is either significantly under resourced to deal with the enquiry workload, or that it has wilfully disregarded taxpayers' rights in this instance.

74. Furthermore, it cannot be fair to remove taxpayers' ability to defend their actions in a tax tribunal or court, under the law as it applied over the time period in which those actions were taken. The Loan Charge APPG can only conclude that the Loan Charge legislation represents a cynical attempt by HMRC to cover up past failures; enabling the department to override taxpayers' protections in law and collect tax that is still disputed, without due process. We call upon HMRC to give taxpayers back their statutory rights to defend against HMRC's enquiries into any open years.

Closed enquires

75. Tax years that fall outside the relevant discovery windows are deemed by HMRC to be 'closed'. Most lawyers and tax experts who provided written and oral evidence to the APPG believed that the Loan Charge will be retrospective in its application. Retrospection refers to the action of looking back on, or reviewing, past events.

76. The Loan Charge is calculated using past transactions (loan amounts advanced) and assumes that certain subsequent events did, or did not, occur to calculate a hypothetical loan balance that is outstanding on which the charge is then levied. It is a mischaracterisation to claim that the Loan Charge applies to 'outstanding loan balances' as some of the loans that it will apply to simply no longer exist, having been written off many years ago.

77. Whilst the Loan Charge was announced in 2016, to take effect from 2019, it will reach back to effectively reopen tax years that are currently closed to HMRC, with no justification as to why.

78. In normal circumstances, it would not be possible for HMRC to reopen tax years without proof of failure to take reasonable care (which would allow HMRC to reopen up to six years) or fraud (which would allow for 20 years). However, the Loan Charge will cover the cumulative loan value, advanced since April 1999, and not repaid by April 2019 – with the whole liability falling in a single year.

79. Over 140 MPs have signed an Early Day Motion tabled by Stephen Lloyd MP, which states that the Loan Charge is retrospective and should be amended.⁶¹ In addition, the Chair of the House of Lords Economic Affairs Committee, Lord Forsyth of Drumlean, agreed concluding that:

[...] the [Loan] Charge is retrospective in its effect, claiming tax from years which should be closed to enquiry.⁶²

80. During our oral evidence session on 17 February 2019, the Loan Charge Inquiry panel asked tax experts if there was any legislative precedent for the overriding of taxpayer protections for people whose tax affairs had been closed for more than 12-months under the Taxes Management Act 1970. Our witnesses were unable to recall any such precedent and research by the Loan Charge APPG Secretariat has also been unable to uncover any example of this.

81. This is backed up by evidence submitted as part of the initial consultation into the proposed Loan Charge legislation. The Institute of Chartered Accountants in England and Wales submitted a response to the technical consultation on 7th October 2016, which said:

[...] it is not acceptable for HMRC to create a retrospective tax liability where none currently exists, especially as HMRC has been aware of loans to employees (referred to in the consultation document – and adopted here for convenience only – as disguised remuneration (DR) schemes) since at least 1999 and has failed to open inquiries or raise assessments before the expiry of statutory deadlines. Using retrospective legislation to remedy lacunae in HMRC's procedures is unreasonable.⁶³

82. The president of the Chartered Institute of Taxation, Ray McCann, told the Treasury Sub-Committee on 10th December 2018:

[...] I have described it as worse than retrospective legislation, because it displaces all the protections that Parliament has put in place. Those protections will or won't be available to the taxpayer, depending on the behaviour, but it would be rare to see very many of the individuals involved in this as capable of being accused by HMRC of having deliberately evaded tax, which gives the Revenue the longest period - the 20 years.

⁶¹ <https://edm.parliament.uk/early-day-motion/51710/the-2019-loan-charge>

⁶² <https://www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-finance-bill-sub-committee/news-parliament-2017/powers-report/>

⁶³ ICAEW <https://www.icaew.com/-/media/corporate/archive/files/technical/icaew-representations/2016/icaew-rep-150-16-tackling-disguised-remuneration.ashx>

83. As HMRC declined our offer to attend an oral evidence session, it was not possible for the Loan Charge Inquiry members to query precedent with a Treasury Minister or officials. We do, however, note that the Chancellor of the Exchequer, the Rt Hon Philip Hammond MP, is on record opposing retrospective and retroactive legislation, whilst in Opposition in 2005:

5 [...] a taxpayer is entitled to know with certainty - be it an individual or a multinational corporation - what he may or may not do in planning his tax affairs [...] a taxpayer [...] is entitled to be protected from retrospective and retroactive legislation.⁶⁴

84. Among the many unjust elements of the Loan Charge, perhaps the most unfair is the retrospective nature of the charge, as it will apply to closed tax years. The Chancellor of the Exchequer is on record highlighting the risks of retrospective, or retroactive, legislation for individual workers and businesses - and yet the Loan Charge amounts to exactly that.

85. Not only is there no real justification for the retrospective nature of the Loan Charge; the fact is that HMRC do not require the retrospective element of this legislation. It is clear from the evidence that the APPG Inquiry received that HMRC can use its existing powers and challenge open cases, as laid down in the tax system, using the current discovery rules. If HMRC uncovers instances where individuals have failed to properly declare arrangements, then HMRC can, and should, use these existing powers to open enquiries.

86. We call upon the Government to remove closed years from the charge calculation entirely as well as any voluntary settlement terms that HMRC are imposing on taxpayers as a requirement to avoid the Loan Charge.

‘Fair Share’ of tax

87. HMRC and the Treasury claim that the Loan Charge is about taxpayers paying their ‘fair share’ of tax.

88. According to HMRC's Briefing Pack⁶⁵:

Most scheme users will end up paying more than if they had agreed a settlement, as the outstanding loans are taxed in a single year, and therefore risk being **taxed** at a higher rate. *[emphasis added]*

⁶⁴ Hansard <https://publications.parliament.uk/pa/cm200506/cmhansrd/vo050607/debtext/50607-08.htm>

⁶⁵ The Loan Charge – Briefing Pack, p. 3 <https://www.tax.org.uk/sites/default/files/Loan%20charge%20briefing%20pack.pdf>

89. The Loan Charge APPG does agree with HMRC that people should pay their 'fair share' of tax. People should pay what tax is due in accordance with the Rule of Law, in line with legislation in force at the time the tax was due. Statutory taxpayer time limits must also apply.

90. The APPG cannot agree that the Loan Charge is an appropriate policy mechanism which achieves this fair balance. Converting non-taxable loans (as agreed by tribunals and courts, even the Supreme Court, as per the cases above) into income for income tax purposes, in addition to other income for the 2018/19 tax year, and expecting taxpayers to pay a cumulative tax (it is a TAX and not a CHARGE, according to the HMRC briefing pack) in a single year, is punitive.

91. The combined effects of Income Tax, Employers/Employees NI, interest and IHT, means that people are facing repayment levels that are considerably higher than could be judged a 'fair share'.

92. The Loan Charge will impose a new liability on declared past transactions, and demand far more than would have been taxed under the law at the time. This is entirely due to HMRC's "Collect the maximum revenue possible" drive, which encourages them to throw in everything except the kitchen sink, rather than exercise sensible discretion.

93. **HMRC's claim that the Loan Charge represents people paying their "fair share" of tax is not backed up the evidence. For many people, the levels of repayment are higher than the tax bills they would have faced on a year by year basis, yet the Loan Charge must be paid in a single year. Indeed the evidence provided to the Loan Charge Inquiry shows that it is a punitive measure and about forcing taxpayers (that HMRC has in many cases only decided in retrospect should have paid more tax) to paying "max tax", the most they can possibly force them to pay regardless of the fairness or what they would have paid at the time under alternative arrangements, such as running a limited company.**

4. The legal situation

Legal background to the Loan Charge

94. The APPG has sought during its inquiry to understand the legal background to the Loan Charge and what powers HMRC already has at its disposal.

95. Parliament has provided, in the Taxes Management Act 1970 (the 'TMA'), that a taxpayer shall not be assessed to tax beyond 4 years of any given year of assessment unless that taxpayer has

behaved "carelessly", in which case they may be assessed up to 6 years after the relevant year of assessment, or has behaved "deliberately", in which case they may be assessed up to 20 years after the year of assessment if there is a "discovery".⁶⁶

96. HMRC has the power to make 'discovery assessments', under TMA70/S29 (1), to prevent a loss of tax. These rules ensure that a taxpayer who has made a full disclosure in the tax return has absolute finality once the time allowed for opening an enquiry has passed. This is the case even if the tax return is subsequently found to be incorrect, unless it was incorrect because of careless or deliberate conduct. In any case where there was incomplete disclosure or careless or deliberate conduct HMRC have the power to remedy any loss of tax.⁶⁷

97. HMRC has claimed that employment related loan arrangements which are the subject of the Loan Charge were "too good to be true" and that taxpayers should have realised that such arrangements were ineffective and that tax would eventually have to be paid.

98. Taxpayers organise their affairs in the context of the legislation and the prevailing interpretation of such legislation at the time.

99. The General Anti-Abuse Rule (GAAR) took effect from 17 July 2013⁶⁸ and is intended to counteract 'tax advantages arising from tax arrangements that are abusive'. The GAAR was implemented along with explicit guidance which included examples of arrangements that were within and outside of GAAR. In order to invoke GAAR, HMRC does not need to go through the Courts.

100. The Loan Charge would not be required if the loan arrangements had been established, by law, to be ineffective. This is the opinion of leading tax barristers and tax litigation specialists.⁶⁹

101. A recent chronology of the history of both legislation and litigation surrounding loan arrangements is outlined below:

- 2002 - *Dextra Accessories Ltd v Macdonald (Inspector of Taxes) [2002] STC (SCD) 413 ('Dextra')*
- 2004 - introduced DOTAS to ensure that new schemes were disclosed to HMRC so that HMRC might have the opportunity to investigate and take appropriate, timely action.

⁶⁶ <https://www.legislation.gov.uk/ukpga/1970/9/contents/enacted>, section 34

⁶⁷ <https://www.gov.uk/hmrc-internal-manuals/self-assessment-legal-framework/salf409>

⁶⁸ <https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules>

⁶⁹ Loan Charge Inquiry, oral evidence session, 27 February, p.20

- 2008 - *Sempra Metals Ltd v Revenue and Customs Comrs [2008] STC (SCD) 1062 ('Sempra')*
- 2011 - Disguised Remuneration rules introduced with the new Part 7a added to ITEPA 2003.
- 2012 - HMRC lose their argument in the case of Murray Group (Rangers FC) and are unsuccessful in arguing that loans should be subject to income tax. Like previous cases before
5 this one, the FTT concluded that loans were not taxable as income.
- 2012 - HMRC hire Behavioural Psychologists to conduct an experiment on one particular group of contractor scheme users to see if they can get users to change their behaviour in regard to taking their legitimate disputes to tribunal.
- 2014 - HMRC lose their appeal to the Upper Tier tax Tribunal in the case of Murray Group
10 (Rangers). The UTT confirms that loans are not taxable as income.
- 2014 - APNs introduced to remove the cash advantage from taxpayers. HMRC chief Lin Homer informed Parliament that APNs would only be used where there was a clear case decision in HMRC favour, however HMRC stand accused of issuing APNs on an almost industrial scale.
- 2015 - HMRC start issuing APNs to individuals. APNs are calculated using loans as the basis for
15 the calculations, though advisers may have understood that HMRC's primary argument was now Transfer of Assets Abroad. HMRC did not issue APNs to contractor scheme employers.
- 2015 - HMRC changed the basis of their argument in Court of Session and had success arguing for PAYE. Many commentators, including QCs commented that they thought the decision odd and expected it to be overturned in the Supreme Court.
- 2016 - The proposed Loan Charge was announced along with a 'technical' consultation.
20
- 2017 - *Rangers v AG for Scotland [2017] UKSC 45 ('Rangers')* HMRC have success in the Supreme Court but actually the decision of redirected earnings is described by some as an 'inconvenient victory' for HMRC because it means that there is no liability attaching to individuals and HMRC have failed to issue assessments to all employers.
- 2017 - Government put forward amendment S554A to make the amounts received by way of
25 loans become two different things at one and the same time. On the one hand these amounts are redirected earnings in line with the Supreme Court decision; and on the other these amounts can also be disguised remuneration and caught by part 7a. Again, most tax commentators cannot see how this paradox of amounts, being two different things, could be

possible. This amendment opens the door for the transfer of the Loan Charge from the employer to the employee where circumstances are that HMRC are unable to collect from the employer.

102. In light of this chronology the APPG would like to understand how HMRC can possibly claim
 5 that "HMRC has always been clear that these schemes were defective" or 'never worked' or that taxpayers and advisers should have been aware of this, at least since 2011, and that this somehow justifies a new charge that is designed to have everybody volunteer settlement on all amounts received since 1999.

103. Remarkably, we have even received a copy of an email sent by HMRC to a taxpayer which
 10 states that there is no specific case law relating to the particular arrangement. The correspondence is clear that HMRC cannot say whether their tax analysis would prevail in a tribunal or court⁷⁰

There is currently no case law on such schemes specifically. As such, no-one, whether
 from HMRC (or elsewhere) can be certain what the view of the tribunals and/or courts
 15 will be on contractor loans schemes. I cannot, therefore, do more than say what HMRC's position is. I appreciate that this may not be what you want, but until a relevant appeal is decided by a tribunal there is unlikely to be a widely agreed view on whether loan schemes worked.

20 **Legal cases and misrepresentation by HMRC**

104. We are also very concerned at the way HMRC and the Treasury have continually misrepresented the reality of the legal position regarding the Loan Charge and in particular the way
 25 the outcomes of court cases have been misrepresented, deliberately, to give the false impression that they are the legal justification for the Loan Charge, when they manifestly are not.

105. In a letter from Sir Jonathan Thompson to Stephen Lloyd MP of 27th June 2018, Sir Jonathan stated that:

⁷⁰ APPG supporting evidence – "Email 27 March 2019 from HMRC to taxpayer"

“DR loans were always taxable. In the Rangers FC case, the Supreme Court unanimously agreed that these amounts [and in this context “these amounts” can only mean “DR Loans”] were earnings, and were taxable.”

5 Lawyers have informed us that this statement is legally incorrect and actually false. DR loans have never been deemed taxable in the manner described and HMRC has never won a legal case to suggest they are – the only case in which they have won, the Boyle case is not relevant as the loans were fraudulent.

Similar misleading claims have been made by the Financial Secretary to the Treasury, Mel Stride in the House of Commons:

10 Mel Stride 29th January 2019 at Treasury Questions:

“These schemes have been taken through the courts on many occasions. A scheme used to the benefit of Rangers Football Club was taken to the Supreme Court—the highest court in the land—and was found to be defective.”

Mel Stride 8th January 2019 (in the Finance Bill Third Reading debate)

15 *“These schemes have been taken through the courts on many occasions. A scheme used to the benefit of Rangers Football Club was taken to the Supreme Court—the highest court in the land—and was found to be defective.”*

Mel Stride (exchange with Anneliese Dodds) Public Bill Committee 11th December 2018.

20 *“They were in many cases promoting schemes that did not work and were defective, and in many cases promoting schemes that had been taken through the courts by HMRC—and, in a case involving Rangers football club, through the Supreme Court. On each occasion, they have been found defective...I am saying that the schemes were taken through the courts and were found defective; they were found not to work.”*

Mel Stride - Topical Questions (11th December 2018):

25 *“The arrangements entered into around disguised remuneration, for which the loan charge is being applied, were always defective at the time they were being used. They have been taken through the courts many times over many years by HMRC and been found to be defective. They also went through, in a particular case, the Supreme Court—the highest court in the land—and the scheme was found to be defective.”*

30 Mel Stride told the House of Commons on 4th March 2019 (Urgent Question):

“These schemes have been taken through the courts, not just the general courts, but the Supreme Court, over a number of years and they have always been found to be defective and not to work.”

However all these statements are misleading as they do not apply to loan arrangements.

106. The reality of the relevant legal cases is as follows:

Dextra Accessories Ltd v Macdonald (Inspector of Taxes) [2002] STC (SCD) 413 ('Dextra')

- 5 • HMRC's interpretation that income tax should be applied in relation to payments of loans from EBT arrangements was deemed incorrect.
- The First Tier Tax Tribunal ('FTT') in Dextra held that loans achieved the "outcome promised when they were being marketed", to use HMRC's own words. HMRC did not appeal the income tax on earnings aspect of that decision.

Sempra Metals Ltd v Revenue and Customs Comrs [2008] STC (SCD) 1062 ('Sempra')

- 10 • HMRC's interpretation that income tax should be applied in relation to payments of loans from EBT arrangements was again deemed incorrect.
- HMRC's PAYE arguments (that the loans were income) were again dismissed.

Rangers v AG for Scotland [2017] UKSC 45 ('Rangers')

- 15 • The FTT (in October 2012) and Upper Tribunal (July 2014) both held in Rangers that the loans were not a sham and could not be regarded as earnings.
- HMRC then changed their argument, as you know, having been advised to by senior tax counsel. The argument changed from whether the loans were taxable, to successfully argued that there had been a payment of earnings when employers paid monies into the EBT. It was on this basis that the Supreme Court (in July 2017) decided in favour of and
- 20 NOT the argument that the loans paid to contractors were taxable. The Rangers decision was thus that, in certain circumstances, the payment of a sum by an employer into an EBT may amount to a 'redirection' of the employee's earnings, in which case income tax should be deducted by the employer under the PAYE system from the sums paid into the EBT before the 'loan' is advanced to the taxpayer.
- 25 • Following the decision of the Supreme Court in Rangers, HMRC issued 'Follower Notices' to other employers that had implemented similar structures. It is believed that has yielded hundreds of millions of tax revenues which have been included by you in the figures purporting to have been raised from employers under the loan charge
- No 'Follower Notices' were issued to taxpayers/contractors because HMRC had no legal
- 30 basis on which to do so

107. **The conclusion of the Loan Charge Inquiry is that the Loan Charge is actually in defiance of the rulings of the Court, and gives HMRC the victory that only they believed was due. Furthermore, if this is a long-standing HMRC position, it is somewhat surprising that it did not**

35 **communicate this to taxpayers over the almost 20-year period during which these arrangements have existed.**

108. **It is also clear that both HMRC and HMT have deliberately misrepresented the reality of the outcomes of court cases. No court case has given the legal basis for the Loan Charge. We are deeply concerned at this cynical and systematic misrepresentation to try to make MPs and**

40 **journalists believe that court cases have deemed the loans taxable, when that is not the case.**

Tax law and misrepresentation by HMRC

109. It has been consistently stated in all communications from HMRC and the Treasury that loan arrangements were “always taxable”.

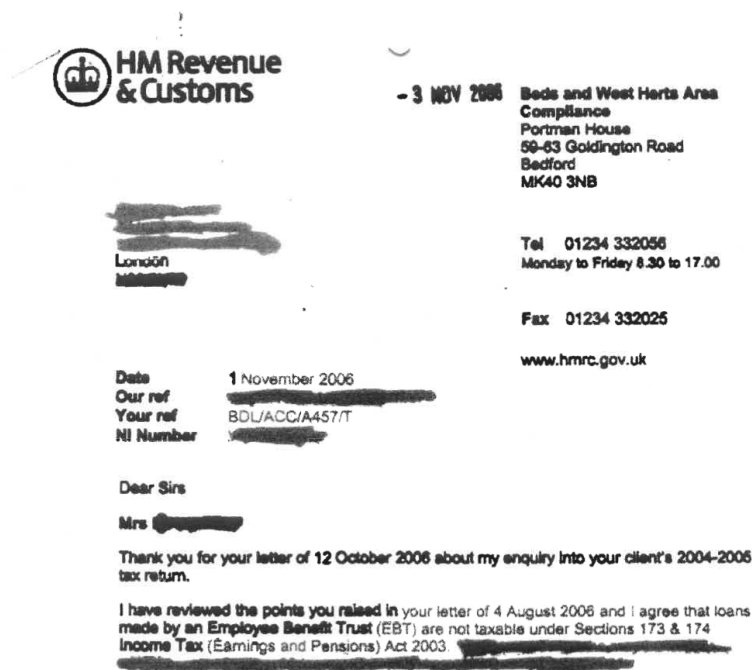
110. Evidence submitted to the APPG demonstrates that this was categorically not the case:

5 indeed HMRC confirmed in 2006 in correspondence with a loan arrangement provider that,

“loans made by and Employee Benefit Trust (EBT) **are not taxable** under Sections 173 & 174 Income Tax (Earnings and Pensions) Act 2003.”

111. This totally negates HMRC and the Treasury’s stance that loan arrangements “never worked”, and proves that the arrangements were never “defective” and that the Loan Charge, by
10 its very nature, is retrospective.

Figure 1: Excerpt of HMRC correspondence in relation to EBT⁷¹



⁷¹ APPG supporting evidence – HMRC letter stating EBT loans not taxable

The real reason for the Loan Charge: to enable HMRC to bypass litigation

112. Far from legal cases setting the precedent for the Loan Charge or leading to HMRC being able to tax payroll loan arrangements, the reality is that **the Loan Charge was introduced at the behest of HMRC to bypass litigation and to avoid going through the normal legal process when**
 5 **challenging taxpayers.**

113. Sir Jonathan Thompson is on record confirming in a letter to Stephen Lloyd MP that the Loan Charge would do away with the need for litigation.⁷² In this he states:

“The Loan Charge has also supported our efforts to settle DR cases without the need to litigate”.

10

The loan charge has also supported our efforts to settle DR cases without the need to litigate. Since 2016, we have agreed settlements with over 5,000 individuals and employers, raising over £500 million for the Exchequer. A further 20,000 people have contacted us to register an interest in settling.

We acknowledge that the loan charge will have a significant impact on some customers who have used DR schemes, particularly those who used them to avoid the most tax. We are actively encouraging any customer who is worried about being able to pay what they owe to get in touch with us as soon as possible. We will look at all personal circumstances to agree a manageable and sustainable payment plan wherever possible.

I would be happy to arrange a briefing with our policy officials to further discuss the questions you asked in your letter, if you would find this useful.

Thank you for taking the time to share your concerns with me.

Yours sincerely



JON THOMPSON
CHIEF EXECUTIVE

114. Similar such statements have been made at other times including in the Treasury report published in March.⁷³

115. It is in fact clear that HMRC already had sufficient powers under law to pursue taxpayers, via
 15 open enquiries into their tax returns and then following due process. The Loan Charge was deemed more expedient. It gives HMRC an automatic victory without the need to litigate and meets the overriding objective given to them by the Government to 'maximise revenues'. It also denies taxpayers the right to any meaningful appeal and to due process.

⁷² APPG supporting evidence – JT letter re settle DR without need to litigate

⁷³ <https://www.gov.uk/government/publications/report-on-time-limits-and-the-disguised-remuneration-loan-charge>

116. Far from being justified, the Loan Charge rides roughshod over the law and legal process. In the opinion of the Loan Charge APPG and the Loan Charge Inquiry, the Loan Charge undermines the rule of law, a fundamental cornerstone of UK democracy.

117. We urge, as part of an independent review, for a proper and honest legal analysis of the case made by HMRC and the Treasury for introducing the Loan Charge. We believe that it sets a very dangerous legal precedent and denies the basic right to a fair hearing to all taxpayers – British citizens – facing it and that as such, it is a sinister undermining of a key principle of our system of justice.

5. HMRC settlements and Time-To-Pay arrangements

10 HMRC settlements

118. The Treasury estimates that around £3.2billion will be recovered following implementation of the 2019 Loan Charge. HMRC Director General, Ruth Stanier, told the APPG that around 75 percent of the yield was expected to come from employers, rather than individuals.⁷⁴

119. However, according to HMRC around 50,000 people will be directly affected by the Loan Charge: the Loan Charge Action Group has estimated it will be closer to 100,000. The APPG has seen no estimate of how many people will experience financial or emotional hardship as a consequence of family members affected by the April 2019 Loan Charge.⁷⁵

120. Furthermore, it is not clear whether the 75 percent refers to the end-clients (some of whom are large multi-nationals, or government departments) who engaged the individual, the employment agencies, the promoters' vehicles or limited companies set up as part and parcel of the marketed arrangement. If the 75 percent refers to a limited company that is contractor owned, then it is an illusion to refer to them as 'employers' as the cost will ultimately be borne by the individual.

121. The Loan Charge Inquiry Survey showed that individuals overwhelmingly had no information from HMRC as to what they have done, or expect to do, to pursue their 'employers' for any tax demanded. This creates an information vacuum for individuals, who cannot feasibly know if an employer has already settled the tax due, or if they should do so themselves. This

⁷⁴ Letter to Rt Hon Sir Edward Davey MP, Chair of the Loan Charge All Party Parliamentary Group from Ruth Stanier, Director General of Customer Strategy & Tax Design, HMRC, dated 6 March 2019

⁷⁵ <https://www.gov.uk/government/publications/disguised-remuneration-further-update/disguised-remuneration-further-update>

risks an unreasonable and unjust scenario, where individuals might pay tax a second time, on top of the employer. HMRC must ensure that this risk is mitigated.

122. We asked for more information from a tax adviser, Gordon Berry, regarding the claims by HMRC that 75 percent of the yield will come from 'employers'. Mr Berry told us that HMRC
 5 appeared to be referring to Owner Managed Businesses (OMBs) when they state 'employers'. These OMBs were sold bespoke loan arrangements as a method to extract profits for the benefit of the directors and key employees of those businesses.

123. In Mr Berry's view, these arrangements were rendered ineffective by the Rangers FC decision. HMRC have the power to simply issue Follower Notices to enforce this ruling. In these
 10 cases the Loan Charge is, therefore, superfluous, as HMRC already possesses the enforcement powers to collect tax that has now been shown to be due. Mr Berry highlighted the disingenuousness of HMRC conflating such settlements with the settlements required under the Loan Charge:⁷⁶

15 What I believe HMRC is doing is deliberately conflating the understanding by using the term "employers" it makes most readers think they are referring to the employers and promoters of contractor structures but actually their statistics are based largely on OMBs. Years of experience suggest that one has to pay very close attention to what HMRC don't say, when one is seeking the truth.

124. The Sunday Times published an article on 17th February 2019 which investigated AML, a loan
 20 arrangement that was widely used:

A spokesperson for [AML] said AML had ceased trading, but the schemes it had promoted were legal and there had been no wrongdoing. He said: "HMRC is deliberately and regrettably targeting workers who were compliant with the tax legislation," adding that AML was not being pursued for any money.⁷⁷

125. The Loan Charge Inquiry has seen no evidence that HMRC are pursuing the promoters of
 25 loan arrangements for the disputed tax.

HMRC communications

126. To date, HMRC have written to around 40,000 taxpayers to inform them about the Loan Charge and HMRC's settlement opportunity.⁷⁸ The Loan Charge Inquiry received alarming

⁷⁶ APPG supporting evidence - email 19th March from Gordon Berry to APPG

⁷⁷ "Ryanair pilots fly into £3.2bn tax storm" – Sunday Times (17-Feb-2019)

⁷⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777092/Awareness_letters_-_list_of_constituencies__004_.pdf

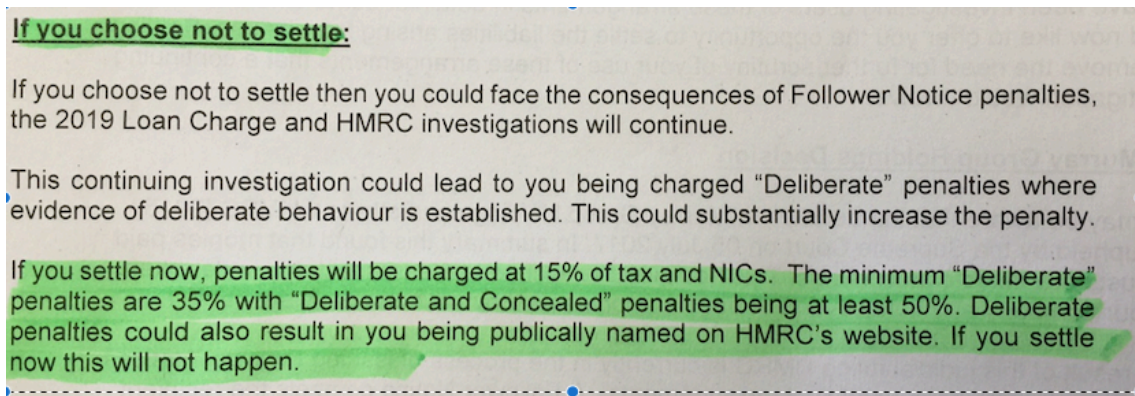
evidence regarding the approach taken by HMRC to communicating the option of settlement to taxpayers.⁷⁹

127. Witnesses highlighted instances where HMRC had attempted to coerce individuals into settlement, or risk penalty charges of 60 percent of the Loan Charge value.⁸⁰ Professional advisers
5 concurred with this, telling the APPG that the inferred message to their clients had been:

[...] if you settle now, which means it's cheaper, we don't have to put so much staff time in trying to chase you, you won't have this extra penalty added on top.⁸¹

128. The Loan Charge Inquiry received a sample letter, which appeared to confirm that HMRC was taking a coercive and, arguably, threatening approach to the settlement process:

10 **Figure 2: Excerpt of HMRC correspondence in relation to Loan Charge settlement**⁸²



⁷⁹ Loan Charge Inquiry, oral evidence, session, 27 February 2019, p, 32

⁸⁰ Ibid

⁸¹ Loan Charge Inquiry, oral evidence, session, 13 February 2019, p, 36

⁸² APPG supporting evidence

Figure 3: Excerpt of HMRC correspondence in relation to Loan Charge settlement ⁸³

Warning of enforcement by Taking Control of Goods

Amount you owe: £62,591.69 (including interest to date)

Thank you for asking to pay the amount above by instalments. Unfortunately, from the information provided, I'm unable to agree to your payment proposal.

I'm unable to agree because the offer in your letter dated the 19/04/2017 towards the outstanding accelerated payments will take too long to pay. Debt management look to obtain any outstanding accelerated payment amounts due in the shortest time scale possible. Therefore we would request you seek further options for raising additional funds. We encourage you to contact us on the telephone number above to discuss this in more detail.

Secondly you stated it had been brought to your attention that the remaining APNs may be invalid due to procedural irregularities that occurred when they were issued. I can confirm at this moment of time we will actively pursue the remaining APNs unless counter avoidance advise us otherwise. You have stated that you have already contacted counter avoidance for this matter so please follow up any further information you seek relating to this directly with them.

You must pay in full immediately.

If you don't, pay in full I'll take control of your goods. This means that I'll list your possessions and arrange to have them removed and sold at public auction. The proceeds from the sale will be set against the debt and the costs of the action. I enclose more information about Taking Control of Goods, so please read this carefully.

- 5 129. The Loan Charge Inquiry received worrying evidence to suggest that HMRC is taking a coercive and threatening approach in its communications with taxpayers with regards to Loan Charge settlements. There appears to be an inference that, should recipients choose not to settle, the consequences will be severe at a financial and personal level.
- 10 130. Beyond the significant financial risks, HMRC's threat to 'name and shame' individuals who followed advice and believed that their loan arrangements were legitimate, could severely impact their career prospects, ironically reducing the prospect of them being able to afford to pay any agreed settlement balance.
- 15 131. Many of the taxpayers who submitted evidence to our inquiry highlighted the stress and anxiety they had experienced as a direct result of the language and tone of HMRC communications. Individuals who believed they were acting within the law, told us that they have been made to feel like criminals. The Loan Charge APPG agrees. It is wholly inappropriate for a government department to intimidate individuals into settlement, through threats and labelling.

⁸³ Submission Unique Reference Number ('URN') CL067

HMRC settlement process

132. HMRC published detailed settlement terms on 7th November 2017. Taxpayers can voluntarily agree to settle on these terms to avoid paying the Loan Charge. A deadline of end of March 2018 was set for taxpayers to register an interest in settling. After March 2018, HMRC removed the deadline and instead stipulated that taxpayers should make contact as soon as possible and provide information to allow HMRC to formulate a settlement calculation by the end of September 2018. Some taxpayers who contacted HMRC received a ‘settlement pack’, which asked for the loan amounts and timings, as well as asking taxpayers to agree to statements such as:

I have now stopped using tax avoidance schemes and I do not intend to use any in the future⁸⁴

133. These statements would appear to have no legal status as the settlement pack does not require a signature from the taxpayer. It also seems impossible for a taxpayer to predict what HMRC might consider tax avoidance in the future, so it would appear that the settlement pack invites the taxpayer to agree to an impossible undertaking. HMRC’s definition of tax avoidance is subjective – it mentions “...bending the rules of the tax system to gain a tax advantage that Parliament never intended.” This definition clearly involves some subjective judgement as to what Parliament intended.⁸⁵

134. Initially, taxpayers who submitted the settlement pack by the end of September 2018 were told to expect calculations back from HMRC by the end of November 2018; this was then extended to the end of December 2018 and subsequently to the end of February 2019. The Loan Charge APPG has been informed by individuals and tax professionals that, even by the end of February 2019, substantial numbers of taxpayers had not had settlement calculations returned by HMRC. On 30th January 2019, Mary Aiston, Director Counter Avoidance, HMRC, told the Treasury Select Committee:

What I want to say, just to reassure people, is that if they come forward with the serious intent to settle before 5 April, they will not be disadvantaged if it takes us a bit of time after that to finalise that settlement. Nobody will be out of pocket as a result of any need for us to discuss that settlement with them. The important thing is that people come forward before 5 April.⁸⁶

⁸⁴ APPG supporting evidence – HMRC Stopped using avoidance

⁸⁵ <https://www.gov.uk/guidance/tax-avoidance-an-introduction>

⁸⁶ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/tax-enquiries-and-resolution-of-tax-disputes/oral/96049.html>

135. HMRC have now opened the door to continuing the settlement discussions in perpetuity. Or, at least until there is a point of no return for the Loan Charge to fall due. It is a deep concern to the APPG that HMRC seem unable to adhere to scheduled deadlines, or to meet its own targets for responding to taxpayers. HMRC does not afford the same flexibility to taxpayers, who are expected to meet to the deadlines HMRC has set for responses – typically around 30 days from the date of a letter.⁸⁷

136. We have been informed that some settlement calculations that have been received contain errors – some of which pertain to basic arithmetic, such as numbers not adding up to quoted totals.⁸⁸

137. It is clear that HMRC are struggling to process the volume of settlement calculations despite having had three years to put in place the required processes.

138. Some settlements include amounts for Inheritance Tax at a rate of 0.25 percent per quarter, from the date the loan was advanced, to the date that the loan is written off by the lender. The APPG would like to state that they cannot understand why HMRC's settlement terms require that the same money received into an individual's bank account will be regarded as income for the purposes of levying income tax and national insurance, but also as a loan for Inheritance Tax purposes. Any reasonable person would say it can only be one or the other.

139. The settlement contracts which HMRC require taxpayers to sign include the opening passage:⁸⁹

TO THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

The tax in the statements in Schedule 1 is unpaid, wholly or in part, because of my failure to meet all my statutory obligations.

140. It closes with:

I undertake not to take any action with a view to obtaining repayment from HMRC of any part of the Settlement Amount including but not limited to making a claim under:

- a) Schedule 1AB of the Taxes Management Act 1970; or
- b) common law.

⁸⁷ APPG supporting evidence – HMRC letter '30 days to pay'

⁸⁸ <http://www.loanchargeappg.co.uk/news/hmrc-interest-miscalculations-render-thousands-of-loan-charge-settlements-incorrect-and-unenforceable-loan-charge-must-be-delayed/>

⁸⁹ APPG supporting evidence – Settlement offer and reply from HMRC

141. The settlement opportunity is presented as voluntary but the evidence presented to the APPG suggests that the terms are not open to discussion. Taxpayers must either agree to HMRC's calculation and settle at that level, or reject the settlement and leave themselves liable to the Loan Charge.

5 142. The taxpayer is required to agree to the statements above, which are hard to read as anything other than an admission of guilt for doing wrong. The contract also appears to make any attempt to reclaim the money paid (supposedly as a 'voluntary settlement') impossible under any circumstances. It is unsurprising that taxpayers feel uncomfortable signing such a contract even in the face of the Loan Charge.

10 143. HMRC have recently made statements that no one facing the Loan Charge will be forced to sell their homes. However, written evidence submitted to the APPG shows that taxpayers have already sold their homes in anticipation of the Loan Charge or having to settle on the terms imposed by HMRC⁹⁰:

15 Last year we sold our family home and downsized to free up some equity to help pay the charge – it didn't raise enough. I save what I can but it's not like we don't have other debts that need servicing and my partner was made redundant in 2016 [...]

144. Other written submissions were received are from people who are nearing retirement age⁹¹:

20 [...] recently reaching the age of 66 I was hoping to retire, reasoning that although retirement would not be a luxurious affair, 50 years in the work place was enough [...] I am not a wilful tax avoider, just like hundreds of thousands of other mobile, self employed and freelance workers I simply took bad advice from unethical institutions

145. We even received a number of submissions from people who are either in retirement or are otherwise unable to work. For these individuals the Loan Charge means bankruptcy⁹²:

25 I served my country for 25 years, I am now a disabled war veteran (60% disabled on my last Medical check) trying to live off my service and OAP. [...] I have broken no laws that I know of and have paid every Tax bill presented by HMRC (I have even been paid a Tax rebate this year) How is it remotely possible, that in a matter of weeks HMRC will present a tax bill for a life changing amount going back potentially for 20 years. Which I cannot possibly pay.

Calculations

30 146. The Loan Charge Inquiry was unable to determine all the details of HMRC's calculations for settlements required to avoid the Loan Charge, but was dismayed to hear evidence from

⁹⁰ URN FT075

⁹¹ URN FT021

⁹² URN EW032

witnesses which suggested the deployment of arbitrary methodology that did not accurately reflect the facts:

5 One of my open years, they sent me a bill of what they believe I owe them and I asked, where did you get this number from? They said we based it on what other people who used this scheme were paid.⁹³

147. The House of Commons Treasury Select Committee have also scrutinised HMRC's settlement calculations. When asked about settlement calculations, Mary Aiston, Director, Counter Avoidance, HMRC, said:

10 We think that the typical settlement that an individual is facing is somewhere in the order of £13,000, which is a lot of money, but for some people it is a lot more than that, and obviously for some it is less.⁹⁴

148. Evidence to the Loan Charge Inquiry suggested that the settlement figure for many people is considerably higher than this. In our survey of 1,768 individuals facing the Loan Charge, we found that less than 4 percent of individuals had received a settlement calculation of under £15,000, 15 whilst 67 percent had received a calculation between £100,000 and £200,000.⁹⁵ The Loan Charge APPG acknowledges that those with higher calculations may be over-represented in our sample; however, on the basis of our data we would have welcomed the opportunity to query the premise of the £13,000 figure provided by HMRC officials.

149. HMRC's Director for Counter Avoidance told the Treasury Select Committee that the 'typical' 20 settlement figure for those facing the Loan Charge is around £13,000. There is no credible evidence to suggest that is or could be an 'average' figure and it is strongly at odds with the evidence given to the Loan Charge Inquiry with regards to the kinds of sums many people are facing.

150. It impossible to properly scrutinise this figure for a number of reasons:

- 25 • A 'typical' figure is an opaque description that allows for no analysis. Average and median calculations would better illustrate the actual settlements that HMRC has proposed to affected taxpayers as well as comparisons of the settlement amounts against individuals expected annual income.

⁹³ Loan Charge Inquiry, oral evidence session, 27 February 2019, p.30

⁹⁴ House of Commons Treasury Committee, Oral evidence: Tax enquiries and resolution of tax disputes, HC 1914, Wednesday 30 January 2019 Q42

⁹⁵ The Loan Charge Inquiry Survey Report

- HMRC has not provided a full (redacted) breakdown of cases, along with details of the methodology used to calculate the Loan Charge at an individual level.

151. HMRC need to clarify where this figure came from and also to for them to publish the full range of settlement calculations and the current individual circumstances of those people
5 affected at different levels.

152. The failure of HMRC to provide detailed information on the methodology used to calculate settlements is of great concern to the Loan Charge APPG and the Inquiry. Our concerns are compounded by witness accounts, which suggest that arbitrary estimates have been used to determine settlement calculations. The provision of a 'typical' settlement figure of £13,000,
10 which is substantially lower than most of the figures we received in evidence and has not been backed by a detailed breakdown of cases, is unacceptable in these circumstances and casts serious doubts about its credibility and the honesty in putting it forward.

153. **Knowing that numerous individuals face total liabilities far higher, including many times more than the 'typical' sum put forward by HMRC, and that, from the evidence, these sums will
15 be impossible to pay for many people, the Loan Charge APPG calls on the Treasury to introduce a voluntary 10% full and final settlement rate on any open/protected years for any taxpayers who opt to take it. This would assist HMRC in dealing with their backlog of open enquiries and allow taxpayers who feel they have a strong case, to continue to dispute the underlying tax liability in a tribunal or court, if they accept the risk that the full tax liability claimed by HMRC
20 may be awarded against them.**

Time-To-Pay

154. Under the published terms of the settlements, HMRC have offered automatic five-year Time-To-Pay (TTP) terms for individuals currently earning less than £50,000 per annum and this has recently been broadened to allow automatic TTP periods of seven years for those impacted by the
25 Loan Charge, who earn less than £30,000.⁹⁶ Other TTP applications, including longer terms, can be agreed on a case-by-case basis. In evidence to the Treasury Select Committee, HMRC's Second Permanent Secretary and Tax Assurance Commissioner, Jim Harra, was confident that the department would be able to successfully agree TTP terms with taxpayers:

⁹⁶ <https://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans#what-scheme-users-should-do>

My Department have an excellent track record of agreeing Time-To-Pay arrangements with taxpayers. We currently have 700,000 of them in place and, in 90% of those, there is excellent payment, which means that we have come up with terms that the taxpayer can live with, and that is something that we will apply in these cases but it does require dialogue between HMRC and taxpayers.⁹⁷

155. HMRC has insisted that TTP agreements must be calculated with an additional 1 percent on top of the standard HMRC late payment interest rate (currently 3.25 percent) for a total of 4.25 percent interest. HMRC has claimed that the additional interest is required to account for the effective extension of credit to taxpayers. The degree to which individuals' creditworthiness has been considered in applying this flat rate is unclear, as is the evidence to confirm that HMRC is properly authorised by the appropriate regulators to advise on, and to extend, such credit in the first place. The Loan Charge APPG would also question why HMRC would consider it riskier to allow a party to pay over time, than to enforce immediate insolvency proceedings against them.

156. The cumulative effect of the late payment of interest over many years can be substantial. When combined with interest that has accrued due to HMRC opening cases, but failing to investigate them, these sums can become exorbitant. In fact, TTP agreements require interest to be charged not only on the disputed tax liability, but also on the balance of accumulated late payment interest at the point of signing the agreement. We have seen written evidence from individuals of tax bills approaching 80 percent of the loan amounts once all the interest is included.

157. We heard from many individuals who had larger disputed tax liabilities – often as a consequence of years of inactivity, or unresponsiveness, on behalf of HMRC in relation to enquiries. They explained that, even with unlimited periods, the size of the settlement figure they faced was likely to lead to dire financial consequences. During our evidence sessions, one witness outlined the reality of the TTP terms as they applied to his calculation:

Last year my income on my tax return was £48,000, so I qualify for five years' Time-To-Pay it automatically. However, I am not going to be able to pay £100,000 in five years' time. Every month I have between £100 and £500 spare. It depends. So it's very difficult for me to do that. I will be re-mortgaging obviously, I spoke to a mortgage adviser about this, they said, no chance. So I am potentially looking at assets or bankruptcy, really.⁹⁸

158. Advisers agreed. David Gill, a tax accountant, outlined the impossible financial situation some clients were now facing:

⁹⁷ House of Commons Treasury Committee, Oral evidence: Tax enquiries and resolution of tax disputes, HC 1914, Wednesday 30 January 2019 Q63

⁹⁸ Loan Charge Inquiry, oral evidence session, 27 February, p. 29

I got feedback from one of our accountants where his client has been offered ten years and he's 57 years old and what you're talking about is in effect a slave contract. It's just a nonsense.⁹⁹

159. This is also supported by written evidence we have received¹⁰⁰:

- 5 I am a man, now in my 60's, who was enrolled in an Employee Benefit Trust (EBT) by my employer some 18 years ago, for around two years I think... it was a long time ago... therefore my dates may not be exact. [...] I am now a low earner, not even reaching my personal allowance tax code, and I am shortly to retire with no income other than the basic state pension
- 10 **160. The Loan Charge Inquiry heard that, for many, the proposed Time-To-Pay (TTP) terms were unlikely to be affordable. For those whose Loan Charge was accrued over years when HMRC had opened enquiries but had undertaken no investigations, or were unresponsive when information was submitted, this is particularly unjust due to the additional interest added at a premium to the government's cost of borrowing or saving rates available to these individuals.**
- 15 **We therefore call upon HMRC to introduce an automatic 10-year TTP for all taxpayers, without reference to income levels; and to do so at a reduced late payment interest rate.**

HMRC recommending people take loans

161. HMRC are recommending that people should consider taking out loans to pay the loan related liabilities or in some cases re-mortgage their houses.

- 20 **162. Mary Aiston, Director Counter Avoidance, HMRC, told the Treasury Select Committee on 30th January 2019¹⁰¹:**

We will explore with people what the best way is and what the right timeframe is. It is possible that, for some people, we might say, "You need to take a loan out if you have equity in your property," if that is the right answer and people can manage the repayments.

- 25 **163. We received evidence from taxpayers that HMRC has applied pressure on them to consider taking out loans. HMRC's settlement offer says:**

It is expected that you use every means to pay the tax and interest liabilities as quickly as you can (for example: you may need to get a loan or sell other assets to pay the liabilities).¹⁰²

⁹⁹ Loan Charge Inquiry, oral evidence session, 13 February, p. 36

¹⁰⁰ URN FT137

¹⁰¹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/tax-enquiries-and-resolution-of-tax-disputes/oral/96049.html>

¹⁰² APPG supporting evidence – HMRC 30 days to pay

164. We have also received a disturbing number of reports of individual HMRC officers telling taxpayers that they should apply for mortgages but not tell the lender that the money will be used to pay a tax bill. If HMRC officers are making such statements, this is a very serious matter. HMRC have no more right to force a taxpayer to jeopardise their finances than any other debtor.

Thank you for your letter dated 7 September 2018. You have told me that although you would like to move towards settlement, you are unable to raise sufficient funds to settle in full by 5 April 2019 and would like HMRC to consider an instalment offer.

It is expected that you use every means to meet your obligations and pay the tax and interest liabilities that are due. This may include raising a loan or selling other assets. If, after considering these options, you are still unable to raise sufficient funds, I may consider an instalment offer.

If I am able to agree an instalment offer, I would expect a substantial initial payment towards the tax and interest liabilities. This amount would become due by 5 April 2019 as part of an instalment offer being accepted.

165. It is completely unacceptable for HMRC to be applying pressure on people to take out loans to pay the Loan Charge or settlements. Our written evidence includes extracts from the following two separate submissions:

I am now facing an extraordinary and lifechanging fine. To fund the "Settlement" I have had to sell assets and taking on additional long-term borrowing highly dependent upon future employability - problematic as I get older and approach retirement age.¹⁰³

HMRC's settlement offer [...] dated 10/1/19 states, "Normally we expect full payment by 5 April 2019. It is expected that your client use every means to pay the liabilities as quickly as they can (for example: they may need to get a loan or sell other assets to pay the liabilities)."¹⁰⁴

166. **The Loan Charge APPG has written to the Financial Conduct Authority (FCA) asking them to look into the practice of HMRC suggesting people take out loans, so see if this abides by FCA rules.**¹⁰⁵

167. **The Treasury should look into the practice of HMRC recommending that taxpayers take out loans and re-mortgage homes to pay off tax liabilities (in Loan Charge cases, disputed ones).**

168. **An investigation should be started immediately to establish if HMRC officers are pressuring taxpayers to take out loans, mortgages or to re-mortgage and to investigate the reports of HMRC staff encouraging taxpayers to lie on their applications. The guidance for HMRC officers must be reviewed to ensure that it is clear that HMRC must not pressure taxpayers to take financial decisions that are not in the taxpayer's interest.**

¹⁰³ submission URN DD015

¹⁰⁴ submission URN DD002

¹⁰⁵ <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Letter-from-Loan-Charge-APPG-letter-to-the-FCA-re-HMRC-suggesting-people-take-personal-loans-1-March-2019.pdf>

6. HMRC record and conduct regarding the Loan Charge

HMRC's failure to act earlier

169. We received considerable evidence criticising HMRC for its inertia with regards to the proliferation of loan based remuneration arrangements. **The Loan Charge APPG finds it inconceivable that HMRC was unaware of loan based arrangements following the introduction of IR35 in 2000, and the reality is that made no attempt to crackdown on their proliferation until at least 2016.**

170. The Loan Charge Inquiry took evidence from Keith Gordon, tax barrister at Temple Tax Chambers at the first oral evidence session where he said:

I'm sure that most people, if they knew the Revenue didn't like the arrangements, would have got out then and not kept it going for another five, six, seven, ten years.¹⁰⁶

171. It is also clear that in reality HMRC realise that they were out of time in dealing with taxpayers using the these arrangements, hence sought the Loan Charge to cover this up.

172. In evidence given to the House of Lords Economic Affairs Committee, Mary Aiston, Director Counter Avoidance, HMRC, was queried about whether the loan charge was a means by which HMRC could help them close some of the large backlog ("tens of thousands") of cases. Mary Aiston replied that,

"The purpose of the loan charge is to draw a line under disguised remuneration as a form of avoidance and to ensure that people who have gotten into disguised remuneration avoidance—as you say, tens of thousands of people and sometimes over a number of years—pay their fair share. (ref HoL EAC 30th January, Q32)

However, in a subsequent letter to Nicky Morgan, Chair of the Treasury Committee, Jim Harra, Deputy Chief Executive, HMRC, stated that workers who had disclosed details of the way they were being paid on self-assessment forms could argue that the Revenue has run out of time to chase them for tax. Jim Harra admitted that in cases where people had given HMRC complete and correct information about tax arrangements and it had not been acted upon,

¹⁰⁶ Loan Charge Inquiry, oral evidence session, 27 February, p. 18

“HMRC is out of time [to make further inquiries]. If the taxpayer settles for those years, they are doing so voluntarily.”¹⁰⁷

173. The fact that HMRC knew they were out of time is most clearly demonstrated in a leaked internal email, dated 10th June 2011 written by an HMRC official, Phil Gilbert, who now leads the “Disguised Remuneration project”; it stated ¹⁰⁸:

From: phil.gilbert@hmrc.gsi.gov.uk[mailto:phil.gilbert@hmrc.gsi.gov.uk]
Sent: 10 June 2011 15:15
To: Richard [REDACTED]
Cc: nigel.j.clarke@hmrc.gsi.gov.uk
Subject: RE: EBT Settlements

- For 'insolvent' situations you are right that HMRC needs the SA machinery available and so some clients may be beyond the reach of Reg 81(4) unless we attempt to use the ETL limits; however that is not to downplay the significant hurdles that HMRC would need to get over to be able to do that. By way of update, I

174. The inference from this email is clear: HMRC failed to act quickly enough to use their considerable existing powers.

10 175. It is clear that the Loan Charge was introduced so that HMRC could go back and seek tax where it had failed to do so in time, where it had failed to do its job.

176. The House of Lords Economic Affairs Committee’s report clearly stated that:

15 HMRC failed to make its position on the schemes clear enough. We do not consider a notice in “Spotlight” on a website sufficient when in many cases HMRC knew which taxpayers and employers were using the schemes and could have communicated with them directly. There were unreasonable delays in legislating and in failing to progress those enquiries which were opened into individuals’ tax affairs, depriving them of certainty even in situations where they were actively seeking to engage with HMRC to finalise matters.¹⁰⁹

20 177. The Loan Charge Inquiry concludes that HMRC failed to act quickly enough to address the growth in loan based remuneration agreements. We have concluded the HMRC must have been aware of the proliferation of these arrangements since 2000 and must have known that promoters were claiming HMRC approval. We are confident that had HMRC intervened earlier and countered these claims, many people would have chosen to not enter loan based arrangements, and those already within them may have sought a different means of

¹⁰⁷ <https://www.thetimes.co.uk/article/we-cant-force-loan-charge-victims-to-pay-up-says-taxman-b8pdn6mtq>

¹⁰⁸ APPG supporting evidence – Phil Gilbert email June 2011 (redacted)

¹⁰⁹ <https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/24207.htm>

remuneration. HMRC are clearly culpable both in failing to stop individuals entering arrangements but also, as a result of their woeful inaction, for the proliferation of arrangements.

178. We call, as part of the independent review into the Loan Charge, for an investigation into HMRC's clear failure to act on loan arrangements at the time, and their subsequent attempts to cover this up and to suggest that they "were always clear" about such arrangements when they failed to communicate this to taxpayers. This investigation should also look at the genesis of the Loan Charge, because it seems likely that HMRC were the driving force behind the introduction of the Loan Charge, precisely to cover up their own failures and to allow them to then go back retrospectively and demand tax they knew they were out of time to collect. This investigation should also look into whether they gave an accurate and honest picture of the reality of the Loan Charge. This must include its inevitable impact on individuals, considering the grossly inadequate and flawed impact assessment that was produced and presented to MPs, and on which the latter based their decision when voting to pass the Loan Charge into law.

HMRC use of contractors

179. We received a number of reports of contractors who worked at HMRC whilst using loan arrangements, and one such contractor attended an oral evidence session. HMRC declined to attend an oral evidence session so we have been unable to discuss this directly with HMRC officials. However, the subject has been raised with HMRC before.

180. At the House of Lords Economic Affairs Committee (EAC) hearing on 22nd October 2018, Ruth Stanier confirmed, when questioned, that HMRC had on occasion engaged independent contractors. Lord Hollick asked:

did you inform them that this sort of arrangement was not permitted?

181. The question was avoided. Lord Hollick asked again:

would it not be incumbent on HMRC to say to people, après fact, that they should not do this, including people who presumably are contracted by HMRC itself?

182. Her reply did not answer the question, and indeed the Chair, Lord Forsyth, noted as much, stating that:

[...] if you thought that the schemes were wrong, why did you not tell the taxpayer?

183. The EAC Clerk wrote to Ruth Stanier following the meeting to follow up on outstanding questions. Ruth Stanier responded on 31st October, but again failed to answer the question. This prompted the Chair, Lord Forsyth, to write personally on 31st October 2018:

5 I note that you have omitted the Sub-Committee's question, communicated in writing by the Clerk after the meeting, on whether any current or former HMRC contractors have used disguised remuneration schemes. I request an answer to this as a matter of urgency.

184. Ruth Stanier did not directly answer the question in her response dated 5th November:

10 The Sub-Committee have asked whether any current or former HMRC contractors have used disguised remuneration schemes. HMRC has never participated in disguised remuneration schemes when paying its employees or contractors, and carries out diligently the checks required by both specific central government guidance and the law. As the tax authority HMRC also carries out compliance activity in relation to all government departments to ensure compliance with tax legislation.

15 185. The Chair of the EAC responded again on 13th November asking for clarification of this passage:

The Sub-Committee noted in its meeting on 12 November that you did not say directly that no current or former HMRC contractors have used disguised remuneration schemes. Could you please confirm whether this is the case?

186. Ruth Stanier provided the following answer on 19th November:

20 As set out in my letter of 5 November, HMRC has never participated in disguised remuneration tax avoidance schemes, for example by remunerating contractors through loans or payments to trusts. It is possible for contractors to use disguised remuneration without the participation or knowledge of their engager. Any HMRC contractor identified in the course of our compliance work as using a disguised remuneration scheme would be
25 investigated in the same way as any other contractor.

187. This answer once again fails to answer the question posed. It only says that it is possible. The EAC had, by this time, asked the same question six times and still HMRC have not properly answered the question. It appears to be clear that HMRC either do not know, or do not wish to admit publicly, that HMRC contractors used these loan arrangements openly without challenge by
30 HMRC.

188. We received a number of submissions from contract workers who worked for HMRC whilst using these loan arrangements:

35 I was contracting at the HMRC in Telford, through an agency, for Capgemini who had been given the IT contact at HMRC. IR35 was kicking off, and I was advised, along with quite a few other colleagues working there at the time, to join a scheme that was sold to me as being legal and HMRC validated [...] I never heard anything from HMRC saying that the

scheme was illegal. The service was fairly expensive [...] HMRC have never actually contacted me about the Loan Charge, it is only through friends that I found out about it.¹¹⁰

5 I was forced to take a loan from my bank (which has 18 months left to run at £450 a month) in order that HMRC withdrew their bailiff instruction. HMRC had refused to negotiate Time-to-Pay with me as they deemed me unable to make the repayments; on exactly the same terms that my bank agreed to. In addition, I was forced to categorise the loan as “debt consolidation” as banks will not offer loans for any tax “debt”. [...] The irony of this situation is that I started using these schemes as a contractor with HMRC.¹¹¹

10 189. These also included contractors who worked for HMRC in areas other than IT:

During August 2007 and June 2010 I was working for HMRC as a lawyer on a temporary employment contract and during this time I used a Loan Scheme. At the time HMRC had many employees on temporary employment contracts. I know of at least three other lawyers who were working for HMRC at this time and also using a Loan Scheme.¹¹²

15 190. In fact, it appears that contractors worked for a wide range of government departments using these same arrangements:

I worked for the HMRC, MoJ and DWP under umbrella schemes as I was pushed in this direction by the agents recruiting on behalf of the government.¹¹³

20 191. It is clear that there were indeed contractors working for HMRC, as well as Government departments, using loan arrangements. The fact that HMRC has tried to evade questions on this matter is disgraceful and we believe a clear attempt to seek to cover-up this embarrassing fact. These arrangements were, furthermore, in cases shared with the Loan Charge Inquiry, declared on tax returns, yet HMRC failed to notify the contractor that they had any concerns about them.
25 The fact is that HMRC was aware of the use of such arrangements.

192. The whole farce of the Loan Charge fiasco (and perhaps the entire confused IR35 legislative landscape) is surely demonstrated no more powerfully than by the fact that HMRC itself was using contractors engaged on what they now claim to be “aggressive” and “defective” tax avoidance arrangements. As well as not acting at the time to close these down, it also follows
30 that HMRC was therefore also embroiled in such tax avoidance arrangements. Whilst this may

¹¹⁰ URN RB016

¹¹¹ URN HC031

¹¹² URN FT004

¹¹³ URN CL070

have been indirectly, they cannot honestly claim to have been unaware of this as people in engaged by them did make DOTAS declarations about these arrangements to HMRC.

193. What is just as concerning is that as some of these contractors were working exclusively for HMRC, and surely as such were 'disguised employees', with HMRC knowingly and willingly
5 operating as a 'disguised employer'.

HMRC's use of Behavioural Insights

194. It is our view that HMRC themselves are responsible for increasing the stress experienced by taxpayers through the use of Behavioural Insights methodology.

195. We are also specifically disturbed by the use of behavioural psychology to manipulate the
10 thought processes and behaviours of taxpayers without their knowledge. This is particularly concerning in light of the agitated states of mental health that are now being reported to us by individuals who feel they will be subjected to the Loan Charge. These people believe they have been subjected to a deliberate targeted campaign of bullying by HMRC which has had a detrimental impact on their mental health.

15 196. Evidence given by HMRC to the Public Accounts Committee in 2012 clearly expose the testing of the use of these techniques to 'nudge' taxpayers, and that the original pilot was being taken forward:¹¹⁴

Written evidence from HM Revenue & Customs

HMRC update to Public Accounts Committee: Letters to Tax Avoidance Scheme Users

4 December 2012

In paragraphs 3.15 and 3.16 of "Tax avoidance: tackling marketed avoidance schemes", the National Audit Office (NAO) reported that HMRC has established a pilot project to evaluate the use of behaviour change techniques to 'nudge' users by writing to them to encourage withdrawal from avoidance schemes.

We have taken forward this work since the NAO's review was undertaken in the following ways.

Three schemes are being used as pilots:

1. The first is a scheme using an Offshore Services Company to avoid PAYE and NIC. We have sent letters to 1200 of those users, split into four groups and will assess which one creates the greatest impact in terms of changing behaviour. There were approximately 1500 users of this scheme in the year 2011/12, and the remaining population will act as a control group. Tax (PAYE, primary and secondary NICs) at risk is approximately £50m.
2. The second is a scheme to avoid Stamp Duty Land Tax on the purchase of property. We have developed draft letters to send to 2500 scheme users in December to explain that that a First Tier Tribunal in the summer found that this particular type of scheme did not work. The remaining users will receive bespoke letters. There are approximately 2600 users of this scheme with Stamp Duty Land Tax at risk of approximately £186m.
3. The third relates to schemes involving property business loss relief. The Government announced on 13 March 2012 that it had acted to close down Property Business Loss Relief schemes. There are approximately 200 people who we have identified have joined the partnership involved in the scheme, and we intend to send letters to all these users.

Please find attached an example of the type of letters being sent. They have been designed using behavioural insight techniques to encourage users to withdraw from avoidance schemes.

¹¹⁴ <https://publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/writev/tax/m2.htm>

197. The Loan Charge Inquiry received reports and submissions detailing HMRC's usage of the behavioural psychology techniques to 'nudge' taxpayers into settling disputes. Regular use by HMRC of the phrase asking people to "put their tax affairs right" is clearly part of the strategy of forcing people to feel, and accept, guilt for wrongdoing. This is despite the arrangements they used being entirely legal at the time. HMRC deliberately misrepresents the Rangers Supreme Court case, which remains the position in law. Loans are still not taxable other than through the Loan Charge.

198. **The evidence we received clearly shows that HMRC's whole approach is a direct cause of the acute anxiety and stress people subject to the Loan Charge are experiencing.** Furthermore, the Loan Charge Inquiry survey uncovered alarming evidence of the state of mind of some respondents:

It is incumbent upon us to report that over 60 survey participants made a direct or a strongly implied statement that they intend to end their life as a means of sparing their family the financial pain or simply to end the horrific reality of the Loan Charge along with the uncertainty and trauma it has brought: 40% of respondents have seriously considered suicide. If we had the ability to identify the 60 individuals we would be immediately informing public health bodies and encouraging them to intervene in these cases. We regard this overall situation as a public health emergency.

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199. The survey also shows that nearly every single respondent to the survey (~98%) said they feel criminalised.

200. **We are deeply concerned about both the ethics and the manner of use of Behavioural Insights by HMRC. Considering the known suicide risk, HMRC is demonstrating a clear inappropriateness and potential recklessness in continuing to persist with these techniques.**

201. **We call for an immediate investigation into HMRC's use of Behavioural Insights and its impact on vulnerable taxpayers.**

The effect of HMRC's rhetoric on taxpayers

202. An overwhelming number of respondents to our inquiry highlighted the damaging impact of HMRC's rhetoric surrounding the Loan Charge. Indeed, the family witnesses who attended our evidence session were quite clear: the amount of money at issue under the Loan Charge itself was

¹¹⁵ <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Loan-Charge-APPG-Loan-Charge-Inquiry-Survey-Report-March-2019.pdf>

not the overriding factor that led to their relative's suicide; instead they believed it was the official rhetoric which inferred an intent to commit a crime.¹¹⁶

203. It is worth reiterating here that 98% of those surveyed in the Loan Charge Inquiry survey said that they felt they were being treated as a criminal.

5 204. Over the course of our inquiry, we have also been dismayed by the language used by HMRC and its ministers. The Financial Secretary to the Treasury, Mel Stride MP has referred to loan based arrangements as:

10 [...] an aggressive form of tax avoidance costing the exchequer hundreds of millions of pounds each year. People who use these schemes receive income in the form of a loan, which they claim is not taxable. However, the loan is, in fact, never repaid. This is wrong and is unfair on those who pay their fair share.¹¹⁷

205. This rhetoric creates a perception of individuals who have tried to circumvent the law for their own personal financial gain. However, the evidence to our inquiry suggests that this was simply not the case for many of those involved. Around 79 percent of respondents to our survey
15 entered into a loan based agreement in accordance with professional or employer advice.¹¹⁸

206. The effect of HMRC's rhetoric is starkly illustrated by the following excerpts from the written evidence sent in by taxpayers:

20 2010 employed as a director of a ltd company; 2011 accountants recommend EFERBS scheme, state because it's DOTAS registered it's transparent with HMRC. They even give it a reference number. [...] I've been on tax credits for past 3 years, since all of this I've self-harmed, [been] on mirtazapine, escitalopram and diazepam for anxiety and panic attacks. I'm seriously dwelling on suicide from the day I wake to the time I go to sleep.¹¹⁹

25 I had job contracts telling me I was definitely PAYE. [...] HMRC wouldn't answer their phones or give me an email address to communicate. My accountants were not concerned, ever. I got really upset when faced with a single tax year bill for £132,451 as a Locum social worker. Despite sending all evidence HMRC ever asked for, the outrageous demands got worse and worse. I ended up chain smoking so much I was admitted to the Churchill
30 Hospital 25/9/18 for major cancer surgery. From all the nerve damage and removal of lymph nodes, I now have Lymphoedema. My left shoulder [is] paralysed and left arm and hand useless. I have a bad speech impediment. Now I can't even get Universal Credit. I have run out of all savings. I can't work or get benefits. My only option now is to starve myself to

¹¹⁶ Closed testimony taken at the Loan Charge Inquiry oral evidence session on 27 February 2019

¹¹⁷ HC Deb, 3 July 2018, cW

¹¹⁸ APPG Loan Charge, Survey Report, Q9

¹¹⁹ URN FT080

death as I can't bare the 24/7 pain I am in. I have nothing left to live for. No career, no prospects.¹²⁰

207. Evidence to our inquiry refutes the Minister's claim that loan based arrangements were 'an aggressive form of tax avoidance'. There is substantial evidence to suggest that people entered these agreements in good faith. HMRC's rhetoric unfairly labels individuals as wilful tax avoiders when, in many cases, they were trying to circumvent the burdensome complexity of IR35, not a tax bill. It appears that HMRC has deployed a narrative that has left taxpayers feeling dehumanised and criminal – with devastating effects for some individuals.

208. **There is clear evidence that HMRC's use of behavioural science 'nudge' techniques, when applied to tax disputes, leads to individuals suffering anxiety and stress. This issue goes beyond the mere Loan Charge issue. An investigation of HMRC's use of suggestive, and possibly misleading, language in their communications with taxpayers must be undertaken urgently.**

HMRC conduct overall

209. **HMRC's conduct with regard to the Loan Charge indicates that it is an organisation out of control, urgently needing better and proper scrutiny and genuine accountability. The Loan Charge Inquiry believes that HMRC's behaviour regarding the Loan Charge confirms that the House of Lords Economic Affairs Committee¹²¹ were right in calling for a 'Powers Review' and for a new system of Parliamentary accountability and scrutiny. The APPG supports these recommendations.**

20 **7. Impact of the Loan Charge**

HMRC impact assessment

210. The APPG inquiry sought to understand whether HMRC had performed appropriate due diligence when they conducted the impact assessment ahead of the Loan Charge legislation coming into effect.

211. It is notable that when the Treasury consulted over the Loan Charge in 2016, over 90% of the respondents raised concerns about the Loan Charge¹²² but these were ignored.

¹²⁰ URN HC021

¹²¹ <https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/24207.htm>

¹²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574567/Tackling_disguised_remuneration_-_Technical_note_and_summary_of_responses.pdf, p.5

212. At the first inquiry session, the APPG officers were told by one of the professional witnesses, Mr David Gill:

5 When the [Loan Charge] policy was announced in March 2016 [HMRC] announced that they would be having a technical consultation, which was designed of course to accept that it was going to happen, it was just a case of how it was going to happen. The consultation [...] did publish [that] 90 per cent of the respondents were critical [and] against the loan charge, including all the professional bodies.¹²³

10 213. HMRC published a policy paper on 22nd November 2017 entitled ‘Disguised remuneration: further update’¹²⁴ which sums up the impact of a number of changes in the Budget 2016 announcements. This makes the following key points:

- 50,000 people are expected to be affected
- £3.2bn of revenue expected to be raised
- Direct quote: “This package is not expected to have a material impact on family formation, stability or breakdown.”
- 15 • Direct quote: “The government anticipates that some of these individuals will become insolvent as a result.”

20 214. The revenue quoted was noted in the HMRC impact assessment to be a total from a variety of measures, some of which were legislated for prior to Budget 2016. The Loan Charge was only one specific measure which was legislated for in the Finance (No. 2) Act 2017. The amount of revenue that is wholly dependent on the Loan Charge is not apparent from the information published by HMRC.

25 215. To date it is estimated 6,000 people have settled their affairs with HMRC netting approximately £1.2 billion for the Exchequer. This suggests the average liability for these individuals is circa £200k – significantly more than the £13,000 liability that HMRC are on record as stating would be a ‘typical’ charge.¹²⁵

¹²³ Loan Charge APPG, oral evidence session, 13 February, p.24

¹²⁴ <https://www.gov.uk/government/publications/disguised-remuneration-further-update/disguised-remuneration-further-update>

¹²⁵ House of Commons Treasury Committee, Oral evidence: Tax enquiries and resolution of tax disputes, HC 1914, Wednesday 30 January 2019 Q42

216. A number of Freedom of Information requests by individuals have sought further data from HMRC on the prospective financial consequences of the Loan Charge. On 14th June 2018, HMRC answered a query regarding insolvency risk¹²⁶:

5 No estimate of the number of insolvencies was produced at the time the policy paper was written. The policy paper contains an estimate of the Exchequer impact which includes an inbuilt assumption to estimate the value of tax receipts lost to insolvencies. This is not given on an individual level.

 No further estimates of the number of individuals expected to become insolvent have been produced.

10 The policy paper says that the measure “is not expected to have a material impact on family formation, stability or breakdown”. No estimate of the number of individuals affected by a breakdown of their family was produced. The policy paper assesses the impact of the Loan Charge across the entire UK population, of which affected DR tax avoidance scheme users make up a very small minority.

15

217. It seems inconceivable that HMRC has undertaken no estimate of insolvency risk, given the large sums involved for some of those facing the Loan Charge.

218. **The APPG considers HMRC’s original impact assessment to be seriously flawed to the point of being negligent. HMRC’s concluded that the impact of the Loan Charge was “not significant”. However, this was based on an assessment of the impact of the Loan Charge on the UK economy overall. It is clear that the individuals, their families and others who are impacted directly, or indirectly, by the Loan Charge may face dire consequences. These consequences have had or will have profound effects on people’s financial and mental health. These consequences were entirely predictable by properly calculating the liabilities people would face, the lack of the ability to be able to challenge them and the life-changing outcomes that would result.**

25

219. When the Loan Charge was introduced and proceeded through parliamentary scrutiny, MPs, including opposition spokespeople, would have consulted and relied on the accuracy and credibility of the official impact assessment. It is now clear they were poorly advised and badly misled by the impact assessment HMRC presented to them.

30

220. **The independent review into the Loan Charge should include an investigation into HMRC’s original impact assessment. HMRC’s misleading portrayal of the Loan Charge may be due to incompetence by HMRC officers and any Treasury civil servants involved, and is a serious**

¹²⁶ FOI2018/01109 - <https://www.whatdotheyknow.com/request/487899/response/1176411/attach/2/FOI2018%2001109%20Wright.pdf>

matter. However, it is the APPG's strong suspicion, considering the manner in which HMRC have behaved and the way they continue to mislead over the Loan Charge, that this impact assessment deliberately omitted factual evidence and the predictable consequences of the Loan Charge.

5 The Loan Charge Inquiry survey

221. The APPG's Loan Charge Inquiry conducted a survey of those who were directly involved in loan arrangements between 1999 to present. The survey was offered to a broad range of people through the APPG website and via social media platforms, such as Twitter, where users were encouraged to spread the survey link as a means of gaining a wider audience. Within a ten-day period, from 25th February 2019 to 6th March 2019, 1,768 participants took part in the survey which explored respondents' involvement in loan arrangements and any impact the proposed legislation might have had on their personal wellbeing. The full report of the survey findings is replicated in Appendix A.

222. The key findings of the survey were:

- Nearly one third never received any information at all about the Loan Charge from directly from HMRC
- 1 in 12 respondents reported that HMRC had never opened an enquiry into any of their tax years (i.e. all of their tax years were closed and HMRC were out of time to challenge them)
- Most of those with open tax enquires did not know the reason for the enquiry and more than 80 percent were told by professional advisers that the enquiry was routine and not a cause for concern
- The majority of respondents were facing liabilities of between £50,000 to £300,000 under the Loan Charge legislation. Only 4 percent of respondents expected a charge of under £15,000
- Nearly 1 in 3 respondents reported they had no possible means of settling with HMRC
- 95 percent had seen no evidence that HMRC were seeking payment from their employers

- Around three quarters of respondents reported that a key driver in their decision to enter a loan based arrangements was the assurance that accountants would manage the process
- 5 • Nearly half of respondents say they would choose voluntary bankruptcy rather than a long Time-To-Pay agreement (5+ years) such as those being offered by HMRC
- More than two thirds feared family breakdown as a consequence of the Loan Charge
- 95 percent reported that the Loan Charge had led to feelings periods panic, anxiety or an inability to cope
- More than 99 percent said that they have now lost confidence in government institutions
- 10 • More than 98 percent of respondents felt that they had been made to feel criminalised by HMRC as a consequence of the Loan Charge
- At least 80 percent had dependents, with approximately 30 percent having three or more dependents. For each person affected by the Loan Charge, an average of two more be impacted by it
- 15 • Three quarters of respondents were 40 or over and believed the Loan Charge would have a significant, negative, impact on their future career and retirement. 8 out of 10 believed they will lose all or most of their retirement saving
- Many expressed concerns that the financial impact of the Loan Charge would lead to dependency on welfare and benefits in the future. 8 out of 10 were concerned that they
- 20 would lose their home and over half believe they will be faced with bankruptcy
- The overwhelming majority said that the arrangements were presented to them as legal, as HMRC compliant and as legitimate tax planning. Most were new to contracting in the UK
- The financial benefit for most people was small (less than 10 percent) compared to remuneration via a private limited company. Over a quarter said the benefit they received
- 25 was less than 5%. The Loan Charge impact will, however, be devastating
- Over half the respondents reported significant costs (the 'fee') charged by the promoters of 16% or more of the money that the end client was paying

223. The survey results demonstrated the reality of the Loan Charge for those impacted, which is in stark contrast to the HMRC's own conclusion in its impact assessment.

Insolvency and bankruptcy risk

224. As stated above, the Loan Charge APPG heard evidence to suggest that some taxpayers believe they are at risk of bankruptcy as a result of the Loan Charge. HMRC's impact assessment of the Loan Charge acknowledges that:

Some of these individuals will be unable to repay the loans, agree a settlement with HMRC before 5 April 2019, or pay the Loan Charge arising on 5 April 2019. The government anticipates that some of these individuals will become insolvent as a result.¹²⁷

10 225. Despite this, HMRC concludes that the legislation:

[...] is not expected to have a material impact on family formation, stability or breakdown.¹²⁸

226. In a letter to the Loan Charge APPG, HMRC gave assurance that it wishes to avoid this outcome:

15 HMRC does not want to make anyone bankrupt. Bankruptcy is only ever reached as an absolute last resort, and very few cases ever reach that stage. We would welcome your support in reassuring people on these points and addressing any inaccurate messages.¹²⁹

227. The APPG would like to be able to reassure individuals that bankruptcy as a result of the Loan Charge is not a risk but, so far, HMRC has failed to provide sufficient evidence that this will be the case. We received anecdotal evidence of an individual who had missed a settlement repayment following a change of circumstances and had subsequently been forced to apply for bankruptcy.

25 And I know someone who did agree to settle and they agreed Time-To-Pay and then I can't remember if there was a job loss or a sudden drop in income and they couldn't make one payment and they went straight for bankruptcy. So part of me is thinking, oh, why don't I just take the nuclear option now?¹³⁰

228. In a letter to the Treasury Select Committee, Financial Secretary to the Treasury, Mel Stride MP, outlined that an estimated 6,000 people have settled their affairs with HMRC, netting approximately £1.2 billion for the Exchequer.¹³¹ The Loan Charge Inquiry cannot ascertain

¹²⁷ <https://www.gov.uk/government/publications/disguised-remuneration-further-update/disguised-remuneration-further-update>

¹²⁸ Loan Charge Inquiry, oral evidence session, 27 February, p.29

¹²⁹ Letter to Rt Hon Sir Edward Davey MP, Chair of the Loan Charge All Party Parliamentary Group from Ruth Stanier, Director General of Customer Strategy & Tax Design, HMRC, dated 6 March 2019

¹³⁰ Loan Charge Inquiry, oral evidence session, 27 February, p 41

¹³¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news-parliament-2017/committee-publishes-correspondence-about-disguised-remuneration-loan-charge-17-19/>

whether the 6,000 individuals who have already settled are representative of HMRC's estimated 50,000 taxpayers who are affected by the Loan Charge more broadly. However, if they are, this would suggest an average Loan Charge liability of around £200,000. This estimate more closely reflects the results of the Loan Charge Inquiry survey, which showed that 49 percent of individuals
5 expected a liability of over £100,000.¹³²

229. Submissions to the Loan Charge Inquiry painted a bleak picture for individuals who are affected by the Loan Charge and are facing bankruptcy, as illustrated by the following three excerpts:

10 I now find myself in the position where without some change being enacted by the Government I will be placed in a position where my only option will be to dispose of all my assets and use up my pension pot and/or declare myself bankrupt and be forced to return to work and effectively attempt to build up within a few years what has taken me 42 years to acquire. Anyone will know that this will be impossible.¹³³

15 Facing bankruptcy, loss of our home, and as I work in financial services - not being able to work again. This sometimes leads to depression which inevitably effects my children. I feel very isolated and helpless. [...] For me - this Loan Charge is like living with a disease - trying to enjoy each day without going there – but living under a constant cloud that soon you and your children's lives will be destroyed.¹³⁴

20 My options are limited as I have no assets so will be forced to choose voluntary bankruptcy, there is absolutely no way I can repay the amount claimed by HMRC within 1, 3, 5 or even 10 years by which time I've reached retirement age.¹³⁵

230. Witnesses to our inquiry questioned the integrity of HMRC's statements regarding
25 bankruptcy:

30 HMRC are being dishonest in so many ways and one of them is saying, we won't force anyone [...] they are, you heard today that they are forcing people, but secondly, it isn't the point. The point is, for some people, their best option is to go bankrupt. You owe that sort of debt, your best option is to go bankrupt and try and hold onto some of your assets and savings. So there will be thousands of bankruptcies. Is that what they really want?¹³⁶

¹³² The Loan Charge Inquiry Survey Report, Q28 What is the amount that HMRC say (or that you expect HMRC to say) you owe and HMRC would be prepared to settle?

¹³³ submission URN SB034

¹³⁴ submission URN SB020

¹³⁵ submission URN SB062

¹³⁶ Loan Charge Inquiry, oral evidence session, 27 February, p. 65

231. The APPG Inquiry's Survey indicated that 32 percent of individuals affected by the Loan Charge see no possible means to settle what HMRC claims they owe. Separately, 45 percent of the respondents indicated that they would rather go for voluntary bankruptcy over signing up to a long (5+ year) Time-To-Pay agreement. Based on the estimates from independent tax experts of 100,000 individuals known to be impacted, this would indicate that somewhere between 30,000 and 50,000 bankruptcies will occur over the next 12 months. Given that the run rate of personal insolvencies in the UK is around 10,000 per month, this would indicate an enormous increase. The costs that this represents to future economic growth are likely to be substantial.

232. Considering HMRC's belief that the implementation of the Loan Charge is likely to lead to insolvency for only some of those affected, it seems an astonishing conclusion that they believe there is no risk to the stability of family life, as concluded in the original impact assessment. Furthermore, it is imprudent that a policy, which introduces insolvency risk for those affected, has not involved an upfront analysis of individual circumstances at far more granular level than HMRC has undertaken.

233. We note that HMRC and the Treasury, when asked how many people are likely to go bankrupt, answer by saying they "don't want to" or "won't force" people to go bankrupt. We believe that this is a cynical ploy to avoid answering the question and to give the false impression that there will be few, if any bankruptcies.

234. On the basis of evidence to the Inquiry, it is clear that there will be a significant number of people likely to go bankrupt due to the Loan Charge. Claims by HMRC and the Treasury to the contrary are not credible. Evidence submitted by taxpayers, barristers and tax accountants to our inquiry has suggested that many individuals will face significant financial hardship as a result of the Loan Charge, something that is simply not being properly or honestly acknowledged or addressed by HMRC or the Treasury.

The suicide risk and known suicides of people facing the Loan Charge

Suicide risk associated with the Loan Charge

235. There is an identified suicide risk of individuals facing the Loan Charge. This was first reported to HMRC in June 2018 and raised in Parliament in July 2018. HMRC and the Treasury were initially

warned about the risk of suicides as a result of the Loan Charge by the Loan Charge Action Group. The Evening Standard reported this on 13th June 2018¹³⁷.

236. The Loan Charge Action Group wrote to Sir Jonathan Thompson, Chief Executive and Permanent Secretary, HMRC, on 13th June 2018 calling on HMRC to set up a 24-hour helpline for those facing suicidal thoughts and severe anxiety as a result of receiving unpayable demands and threatening letters from HMRC.¹³⁸ The letter stated:

“I need to make you aware, as a matter of some urgency, that we have members who are reporting suicidal thoughts and actual risk of suicide to us as a group. Monday night we had one such report from a member who contacted us in distress and who was clearly of a suicidal mindset. He attributed this directly due to the realisation of what the 2019 Loan Charge will mean for him and his family. Shockingly, this was the second such call in less than two weeks. We are becoming more and more deeply concerned about the effect this policy is having on people’s mental health and ultimately, on their daily lives. With the suicide risk being a direct result of your relentless pursuit of individuals, including our members, we hereby demand that you establish, as a matter of urgency, a 24-hour helpline that individuals may call if in severe mental distress or have suicidal thoughts”.

237. Sir Jonathan Thompson did not respond to this letter in person, which, considering the seriousness of the subject matter, is surprising. The reply, from Julie Elsey, Counter Avoidance Director, HMRC, which the APPG has also seen, merely offered that people contact HMRC to settle their tax affairs. This is staggering in its callous indifference. APPG member Stephen Lloyd MP also called for a proper helpline in the House of Commons on 3rd July 2018.¹³⁹ This was ignored by the Minister, Financial Secretary to the Treasury, Mel Stride.

238. The APPG is shocked at the way these concerns were not dealt with at the time and that the only advice HMRC could offer was that people contact HMRC to settle their tax affairs, the very thing that has led people to feel desperate and, in some cases, suicidal.

239. The APPG is appalled at the suggestion, continually made by HMRC: that suicidal people should contact HMRC to “settle their tax affairs”.

- An anonymous HMRC spokesperson commented to the Financial Times report regarding the APPG’s first letter to Sir Jonathan Thompson about suicides and said, “We take the

¹³⁷ <https://www.standard.co.uk/business/suicide-watch-the-preventable-tax-timebomb-looming-for-freelancers-a3861916.html>

¹³⁸ https://www.hmrcloancharge.info/hmrc_please_be_suicidal_during_office_hours/

¹³⁹ <https://hansard.parliament.uk/Commons/2018-07-03/debates/901D6815-84A2-4F11-BBB9-615B53094392/TopicalQuestions?highlight=loan%20charge#contribution-FAD706B1-33B4-4159-8A30-121165C777D3>

welfare of customers very seriously and we treat all customers with sensitivity *to help them to understand the options available to them to settle their tax affairs.*" ¹⁴⁰

- Sir Jonathan Thompson's correspondence states that people should contact HMRC, as "that is by far the best way for HMRC to support them".

5 ***Calls for 24-hour counselling helpline for those facing the Loan Charge***

240. The responses to written questions asking for such a helpline have been wholly inadequate, stating¹⁴¹:

HMRC has an existing dedicated line, which has been widely publicised, for those interested in getting out of avoidance schemes.

- 10 241. This is not what has been asked for. Calls made by volunteers to this dedicated line (which adheres to standard office hours and operates only Monday to Friday) reveal that the staff answering can only assist people wishing to settle on HMRC's terms. They have no mental health training. No attempts were made to assess the caller's mental health status.

- 15 242. **The Loan Charge Action Group believe that HMRC should have set up an HMRC-funded 24-hour mental health helpline, to ensure people facing the Loan Charge (and APNs) have access to counselling twenty-four hours a day. This has also been suggested by MPs who are members of the Loan Charge APPG. We believe that HMRC's failure to set up such a helpline, knowing the clear suicide risk of people facing the Loan Charge, is wilfully negligent.**

243. **The APPG believes that such a helpline should be set up as a matter of urgency.**

20 ***Suicides of people facing the Loan Charge***

244. Tragically, according to evidence provided to the Loan Charge Inquiry, there have been three confirmed suicides of people facing the Loan Charge. Two of these reports have come from advisers representing the family of the victims; one directly from the family members. The Loan Charge Inquiry has also been given information from a whistleblower working for HMRC that
- 25 HMRC are aware of at least six suicides of people facing the Loan Charge.

245. In March 2019, the Loan Charge Inquiry received an email from a professional adviser, who had been supporting the family of an individual facing the Loan Charge who committed suicide.¹⁴²

¹⁴⁰ <https://www.ft.com/content/c70d7e9e-44c0-11e9-b168-96a37d002cd3> - quote in original version of article

¹⁴¹ <https://www.theyworkforyou.com/wrans/?id=2018-07-03.160062.h&s=loan+charge+suicide#g160062.q0>

¹⁴² <http://www.loanchargeappg.co.uk/news/loan-charge-appg-open-letter-to-the-prime-minister/>

The adviser was clear that the pressure from HMRC, as a result of the Loan Charge, was the reason the individual took the decision to end his life.¹⁴³

246. Sadly, this was not the first instance that the Loan Charge Inquiry was informed of a case of suicide of someone facing the Loan Charge. On 27th February 2019, the Loan Charge Inquiry evidence session heard the harrowing testimony of family members who told us how their relative had taken the tragic step of suicide. The family explained that their relation was overcome with anxiety, caused by the protracted nature of their tax enquiries and by HMRC's accusatory rhetoric, which had made them feel like a criminal.

247. The family stated that it was not the amount of tax in dispute that had driven their relative to suicide; rather, they believed it was the administrative interface with HMRC that had caused unbearable mental anguish.

248. The family who gave oral evidence to the Loan Charge Inquiry stated that he felt as if he had done something that broke the law and that he might go to prison. Their evidence included this, referring to his suicide letter:

"The letter spoke of the love he had for his family but what he mostly referred to was himself. He wrote about being at the end of his tether with the Loan Charge matter. He wrote such awful things about himself, things that just weren't true, that he clearly thought about himself at the time. He wrote that he did not set out to do such wrongdoings; he wrote about being unable to speak to his GP about his anxiety as he was ashamed, his fear of going to prison, his disgust in himself for getting mixed up in the Loan Charge and his belief that he would now go to hell. [He] finished his pages and pages of his letter with "I can't say any more. I'm so very scared of what I have to do today but I am at my wits' end and can't see any other way".

249. The very first sentence of the testimony given at the second oral evidence by the family mentioned the Loan Charge, and it was clear from the testimony that the Loan Charge was the cause of their loved one's tragic death. They described how his mental health worsened, including this section:

This was the last time [we] saw him. He was despondent, flatly refusing to discuss the Loan Charge situation, stating that it was upsetting. The situation was exacerbated by HMRC's delays in the settlement process, something that many respondents to the survey have also mentioned. The family explained:

It turns out when the settlement figure was submitted it was met with a reply from his tax settlement company stating that they have not received any timescales from HMRC yet in terms of how long it will take them to process our submissions. However, we fully expect that this will be at least a couple of months. In the state we now know he was in, this would

¹⁴³ Ibid

have been a devastating blow, unable to see past the deadline, unable to carry on for another possible couple of months in limbo or trying to survive on two to three hours' sleep a night, as he had been for months.

250. The Loan Charge itself was specifically mentioned in the suicide note:

5 "The letter spoke of the love he had for his family but what he mostly referred to was himself. He wrote about being at the end of his tether with the Loan Charge matter. He wrote such awful things about himself, things that just weren't true, that he clearly thought about himself at the time. He wrote that he did not set out to do such wrongdoings; he wrote about being unable to speak to his GP about his anxiety as he was ashamed, his fear of going to prison, his disgust in himself for getting mixed up in the Loan Charge and his belief that he would now go to hell. [He] finished his pages and pages of his letter with "I can't say any more. I'm so very scared of what I have to do today but I am at my wits' end and can't see any other way".

251. The family are in no doubt as to the link, they stated of the suicide letter:

15 It was clearly written by a man who had been broken by the Loan Charge process. I believe that the entire Loan Charge situation, the build up to date, the false hopes of an end, for an answer, just consumed him.

252. It is simply not credible to try to deny this link, or deny the fact that suicides linked to the Loan Charge have occurred.

20 253. The Loan Charge APPG received notification of another suicide directly related to the Loan Charge in early March 2019.

254. **The conclusion of the Loan Charge Inquiry, from the evidence presented to us, including by the family of a person facing the Loan Charge who committed suicide, is that the link, between cases of suicide reported to the APPG and the Loan Charge, is clear and irrefutable.**

25 ***APPG correspondence with HMRC over suicides related to the Loan Charge***

255. The APPG notified Sir Jonathan Thompson on 11th March that we had been informed of as many as six possible suicides of people facing the Loan Charge, and that the APPG had been sent confirmation of three of these. The APPG letter asked, as a matter of urgency, for Sir Jonathan to respond and tell the APPG how many suicides HMRC were aware of by people facing the Loan Charge.¹⁴⁴

256. Sir Jonathan's response of 13th March to the APPG stated that no information had been provided to HMRC that enabled them to identify an individual that they could link to both suicide and the Loan Charge; he criticised the APPG for calling for a delay to the Loan Charge. He also

¹⁴⁴ <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Letter-from-Loan-Charge-APPG-letter-to-Sir-Jon-Thompson-re-suicides-11-March-2019.pdf>

asked for the APPG to share information about any named individual with HMRC, in direct breach of GDPR rules.¹⁴⁵

257. A further letter from the Loan Charge APPG to Sir Jonathan Thompson of March 15th reiterated the need for an urgent answer to the question as to how many suicides were HMRC aware of by people facing the Loan Charge and criticised his reply.¹⁴⁶

Sir Jonathan Thompson's reply of March 25th again omitted to answer the urgent question as to how many suicides of people facing the Loan Charge HMRC aware of. He did, however, confirm that HMRC had been made aware on March 18th of a suicide by an individual who "had used disguised remuneration schemes" and that "In line with HMRC's processes, this matter was referred to the Independent Office for Police Conduct".

258. This fact was subsequently mentioned in an article in the Financial Times. In the article, the IOPC confirmed it had received a recent referral from the tax authority about the death of an individual. "This will be assessed to determine whether an investigation by the IOPC [into HMRC's conduct] is required," a spokesperson said¹⁴⁷.

15 *Parliamentarians raising suicides and the suicide risk*

259. Suicide risk and actual suicides in relation to the Loan Charge have now been raised multiple times in the House of Commons. The incidence of suicides or potential loss of life due to the impact of the Loan Charge has been mentioned in the House of Commons on twelve different occasions to the Financial Secretary to the Treasury. The first occasion was in a question from Stephen Lloyd MP on 3rd July 2018 in a Treasury Topical Question.¹⁴⁸ Several Parliamentarians have raised this: Peter Bone MP¹⁴⁹, Siobhain McDonagh MP, Ann Main, MP, Steve Baker MP, the Rt. Hon. Nicky Morgan MP, Jim Fitzpatrick MP, Liz Twist MP, Ruth Cadbury MP, Ross Thomson MP, Lyn Brown MP, and Baroness Noakes. **For so many parliamentarians to raise the suicide risk and actual suicides linked to a Government policy is unprecedented.**

¹⁴⁵ <https://www.gov.uk/government/publications/letter-from-sir-jonathan-thompson-to-the-loan-charge-all-party-parliamentary-group>

¹⁴⁶ <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Letter-from-Loan-Charge-APPG-reply-to-Sir-Jon-Thompson-re-suicides-15-March-2019.pdf>

¹⁴⁷ <https://www.ft.com/content/b5c2b6e2-513e-11e9-b401-8d9ef1626294?segmentid=acee4131-99c2-09d3-a635-873e61754ec6>

¹⁴⁸

<https://hansard.parliament.uk/Commons/2018-07-03/debates/901D6815-84A2-4F11-BBB9-615B53094392/TopicalQuestions?highlight=loan%20charge#contribution-FAD706B1-33B4-4159-8A30-121165C777D3>

¹⁴⁹ HC Deb, 25 October 2018, c459

260. On Wednesday 6th March, Vice-Chair of the Loan Charge APPG Ross Thomson MP, highlighted the oral evidence given to the Loan Charge Inquiry by the family of the person who committed suicide and asked the Prime Minister to personally intervene, delay the Loan Charge and suspend settlements with immediate effect.¹⁵⁰ In response, he had a letter from the Treasury which failed to address the actual suicide.

261. **Mel Stride, Financial Secretary to the Treasury and the Minister responsible, has to date failed to acknowledge in the House of Commons that suicides have occurred on each occasion that the topic has been raised. Neither has he offered his condolences to the bereaved families. The APPG find this astonishing and unacceptable for a Minister.**

10 *The clear and serious risk of further suicides of the Loan Charge is not delayed*

262. The APPG also has first-hand written testimony from a person who attempted to harm themselves, explaining what drove them to do so¹⁵¹:

15 I have had to sell my family home and move further from work. I have used up my savings and have no buffer. My family relationships have suffered, especially with children as I struggle with this. I have no faith or confidence in the government or the future. One simply cannot prepare for retrospective legislation and retrospective tax. [...] I came to London in 1993 with nothing, lived for a time in a homeless hostel, got myself sorted, got a job, worked hard for two decades and now face having it all taken off me again. I'm terrified of becoming homeless as I see so many on the walk to work. I have tried to walk under a Range Rover about Xmas 2017, got hit by a bus instead and received a torrent of abuse for my efforts. Made me realise it would make no difference to the people behind this what happened to me.

263. We received other written evidence stating that the treatment by HMRC in this manner has had a terrible impact on people's lives¹⁵²:

25 [...] around 2002 I was advised by a professional chartered accountancy practice to close my company due to the risk of IR35. Circa 2011 I received notification that HMRC were conducting enquiries into my previous tax affairs. I was surprised and didn't know what this meant. HMRC advised me that I didn't need to worry, nothing was required of me and they would let me know if they needed anything. Nothing was heard further for 2.5 years. [...] the whole matter [...] has ruined my relationships, my health, my mental state and my over wellbeing. It is a disgrace to be treated like a criminal and branded a tax avoider when this is simply NOT true.

¹⁵⁰ HC Deb, 6 March 2019, c960

¹⁵¹ URN HC015

¹⁵² URN FT053

264. Neither HMRC nor the Treasury have heeded calls to set up the 24-hour counselling service that is clearly needed. However, in misleading fashion, which typifies HMRC's conduct throughout its handling of the Loan Charge, HMRC has sought to give the impression that it is being responsive to the situation:

5 "HMRC has had a number of exchanges with the Loan Charge Action Group (LCAG) in connection with the setting up of a helpline for people in distress."

265. The suicide risk amongst people facing the Loan Charge is high and the evidence sent to our Loan Charge Inquiry shows it is serious and widespread. This is unprecedented. The clear and known risk to people has so far been callously ignored by HMRC and the Treasury, who are
10 instead set on a determined push to encourage people to settle before the Loan Charge comes into effect in April 2019. Rather than addressing concerns about the suicide risk, there is an ongoing attempt to cynically deflect any criticism by repeating the same misleading statements about the Loan Charge as a whole. **The APPG is shocked at the way that HMRC and the Treasury continue to prioritise attempts to justify the Loan Charge over concern for the potentially
15 disastrous impact on individuals facing it, including the risk of suicide. We believe that is unethical and shows a disregard for the basic principles of public service.**

266. HMRC have criticised the Loan Charge APPG, the Loan Charge Action Group and others, stating that they should not call for a delay to the Loan Charge, even considering that Loan Charge-related suicides have occurred. We believe this is a shameful way for a Government body
20 to behave, as well as being reckless. The APPG finds it wholly inappropriate for a government department to tell a group of elected Members of Parliament what they should or should not call for. We also believe that it is highly irresponsible for HMRC say that the APPG should not be calling for the suspension of a policy that has had, and is having, a devastating and, in some cases, tragic impact on people and their families.

25 **267. We believe that for HMRC and the Treasury to ignore the APPG's call to delay the Loan Charge and suspend the settlement process is wilfully reckless, now that there is evidence of suicides linked to the Loan Charge.**

268. Dr Iain Campbell, Secretary-General of the Independent Health Professionals Association (some of whose members are affected by the Loan Charge) warned of the situation back in June
30 2018 "It's not just twenty years of retrospective taxation, it's a preventable mental health timebomb. Sadly, we'll see more suicide attempts. Where's the state's duty of care?"¹⁵³ The APPG

¹⁵³ <https://www.standard.co.uk/business/suicide-watch-the-preventable-tax-timebomb-looming-for-freelancers-a3861916.html>

would now ask that again. We see no evidence of the duty of care and, tragically, not only have there been more suicide attempts, but we know there have been actual suicides.

269. **The manner in which HMRC and Treasury Ministers have so far failed to properly acknowledge the suicide risk and the awful the fact that people facing the Loan Charge have killed themselves is extraordinary and deeply concerning. It suggests a robotic and callous indifference to the catastrophic reality of this policy on individuals. The obvious effect on people being pursued by HMRC in relation to it is plain to see.**

270. If the threat of more suicides were taken at all seriously by HMRC and the Treasury there would be an immediate delay to the Loan Charge policy and a suspension of all settlements linked to it.

271. **The Loan Charge APPG reiterates its call for the urgent announcement of a delay and suspension of the Loan Charge. The Loan Charge APPG is extremely concerned that, without immediate action on behalf on HMRC, the Loan Charge could result in more avoidable tragedies. The Government must recognise the critical role it has in preventing this terrible risk and respond urgently to mitigate it. The APPG will continue to call for this delay and continue to hold HMRC and the Treasury to account for refusing to do this, despite them being fully aware of the likely consequences.**

8. Misinformation and obfuscation by HMRC and HM Treasury

272. A recurring theme in the evidence submitted and given to the Loan Charge Inquiry, and also
5 evident in HMRC and Treasury documentation, in Ministerial statements and in our direct dealings with HMRC and the Treasury, has been misinformation and misrepresentation of information.

273. The Financial Secretary to the Treasury, Mel Stride, has been sent numerous Parliamentary Questions by many MPs. These receive template answers which repeat the standard lines to justify the Loan Charge and only partially, or completely fail to answer the questions tabled.

10 274. Both the Chancellor, Phillip Hammond, and Mel Stride have claimed in the past that the loan arrangements were either illegal, unlawful, or were tax evasion. The Chancellor later corrected himself in a letter to the Treasury Select Committee in which he said he should have said “tax avoidance”.¹⁵⁴ Mel Stride has not issued any such clarifications for his statements.

Convictions related to the Loan Charge

15 275. HMRC and the Treasury give the strong impression that HMRC have rigorously pursued promoters of loan arrangements, when the Loan Charge Inquiry has seen no evidence to support this. HMRC have refused to answer FOI requests on this point and Parliamentary questions have also not given clear answers.

276. The House of Lords Economic Affairs Committee’s November 2018 report clearly stated that:

20 HMRC has a range of powers at its disposal to deal with promoters of tax avoidance schemes, but we have seen little evidence of action taken against those who promote disguised remuneration schemes. In the absence of publicised actions, HMRC appears to be prioritising recovery of tax revenue over justice by targeting individuals, rather than
25 promoters (who could be considered more culpable), so it can more easily recover liabilities.¹⁵⁵

277. There is very little evidence to back up HMRC claims. Furthermore HMRC and the Treasury, when asked, have not been forthcoming in providing it.

¹⁵⁴ http://data.parliament.uk/DepositedPapers/Files/DEP2018-1144/Letter_Philip_Hammond_to_Nicky_Morgan.pdf

¹⁵⁵ <https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/24207.htm>

278. However, the most startlingly dishonest misrepresentation by HMRC and the Treasury, including a Minister, has been over criminal convictions for promoters of loan arrangements. The answer to an FOI request exposed this clear dishonesty.

279. Mel Stride was challenged on the BBC Radio 4 Money Box show on 2nd March 2019 on the subject of the promoters of the loan arrangements:

PAUL LEWIS - And you've gone after the firms that set the schemes up?

MEL STRIDE - And I was coming to that Paul. So on the promoters, really important Paul, we are acting, so in fact the government has brought in very big penalties, up to a million pounds for promoters engaged in tax avoidance.

10 PAUL LEWIS - Sure

MEL STRIDE - Since 2016 there have been a number of criminal convictions in this respect that have already led...

PAUL LEWIS - Around the Loan Charge?

MEL STRIDE - More, around tax avoidance.

15 PAUL LEWIS - Around the Loan Charge?

MEL STRIDE - Around tax avoidance.

PAUL LEWIS - But not around the Loan Charge?

20 MEL STRIDE - Which includes the Loan Charge activity and that had led to over 100 years cumulatively of imprisonment for those individuals involved, so this is not a case of just sitting back and allowing promoters to get away with it.

280. The reference to '100 years of custodial sentences'¹⁵⁶ appears to reflect a quote from HMRC in the Guardian newspaper on 16th February¹⁵⁷:

25 "Since the formation of HMRC's fraud investigation service on 1 April 2016, more than 15 individuals have been convicted for offences relating to arrangements which have been promoted and marketed as tax avoidance schemes and sentenced to over 95 years custodial.

281. However, a Freedom of Information request sent to HMRC revealed¹⁵⁸:

None of the convictions referred to in the statement above were therefore for offences directly related to arrangements that will be subject to the 2019 (DR) Loan Charge.

¹⁵⁶ letter from Ruth Stanier to the APPG Chair – 6th March 2019

¹⁵⁷ Thousands of workers hit with massive tax avoidance bills – Guardian (16 February 2019) - <https://www.theguardian.com/money/2019/feb/16/thousands-of-workers-hit-with-massive-tax-avoidance-bills>

¹⁵⁸ FOI2019/00534 - https://www.whatdotheyknow.com/request/553089/response/1336224/attach/2/FOI2019%2000534.pdf?cookie_passthrough=1

282. This clearly shows that none of the convictions that Mel Stride and HMRC have regularly presented as evidence of HMRC pursuing promoters of loan arrangements has anything to do with the Loan Charge.

283. It is disgraceful that the Minister and HMRC have issued such misleading statements and it is clear from the interview with Paul Lewis that Mel Stride knew full well that these convictions were nothing to do with the Loan Charge.

284. It is therefore impossible to come to any other conclusion that that this was a deliberate and cynical attempt to mislead, which we believe is a breach of the Ministerial Code and (with regard to HMRC) the Civil Service Code.

10 *Other misleading points repeatedly made by HMRC and the Treasury*

285. There are many other points made by HMRC and the Treasury which, upon scrutiny, are found to be misleading:

➤ The Treasury claim that they consulted over the Loan Charge, yet omit the fact that they ignored the consultation where serious concerns were raised about the Loan Charge.

15 The consultation in question had 388 replies of which an overwhelming 90 per cent opposed the Loan Charge, in particular regarding the clear retrospective nature of the legislation and also of the disastrous effect it would have on individuals¹⁵⁹

➤ As stated earlier in the report, HMRC have claimed the typical liability is around £13,000, yet the evidence provided to the Loan Charge Inquiry shows that this is simply not credible and that people are facing far greater sums. The Loan Charge Inquiry Survey revealed only 3.6% of respondents were liable for less than £15,000. It seems clear that this lower sum has been presented in another attempt to falsely reassure MPs of the impact of the Loan Charge

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➤ HMRC and the Treasury repeatedly make misleading statements about the legal precedent for the Loan Charge and the outcome of court cases. As explained earlier in the report, the Supreme Court decision was with regard to the payment from Rangers FC into Employer Benefit Trusts (EBTs), it was not about contractor loan arrangements.

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https://www.google.com/url?sa=t&source=web&rct=j&url=https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574567/Tackling_disguised_remuneration_-_Technical_note_and_summary_of_responses.pdf&ved=2ahUKEwjon7Wz1bHhAhVEEIAKHSifADsQFjAAegQIBxAC&usg=AOvVaw1C0vqKkvDjFyb4mHyKywJO

HMRC's original argument was that loans were taxable as income: they lost repeatedly on this point and have never won that argument in court

- HMRC give the impression there will be few if any bankruptcies, yet from the Loan Charge Inquiry survey into the Loan Charge a staggering 51 per cent of respondents said they will be in danger of bankruptcy, and 55 per cent said they would chose bankruptcy over extended Time-To-Pay arrangements. Even using HMRC's estimate of 50,000 people impacted by the Loan Charge, this would indicate over 25,500 people – and their families – facing bankruptcy
- HMRC have been less than open and honest about the fact (now confirmed) that contractors working for HMRC - contracted through HMRC-approved supplier agencies, openly used arrangements that HMRC now claim are unacceptable - are facing the Loan Charge.

286. The conclusion of the Loan Charge Inquiry is that there has been a systematic campaign of misinformation by HMRC and the Treasury over the Loan Charge. This is a blatant attempt to airbrush the reality of what is a deeply questionable policy and also cover up the likely impact of the Loan Charge on individuals, something that HMRC and the Treasury must be aware of. This is deeply worrying for a public body and Government department.

287. [As part of the review into the Loan Charge, there must be an investigation into this cynical campaign of misinformation.](#)

288. Letters, documents, and answers to written Parliamentary questions by HMRC and the Treasury lay out facts in a deliberately misrepresentative way, so as to mislead and give a false impression. This has become endemic with regard to the Loan Charge and where such misrepresentation is done deliberately, is as dishonest as lying.

289. HMRC and the Treasury, including Ministers and in particular Mel Stride, have chronically misrepresented information to both justify the policy and to cover up reality. Their deeply questionable, and at times clearly cynical, use of propaganda to silence criticism and mislead parliamentarians and journalists has demonstrated a complete and arrogant disregard for accountability and for Parliamentary scrutiny. It is clear that HMRC and the Treasury hoped that partial and knowingly misleading statements and documents would allow them to avoid scrutiny and thus be able to push through the Loan Charge policy, even knowing the likely devastating consequences.

290. What is most troubling to the APPG is that this overall attitude seems to be rife within the upper echelons of HMRC and involves very senior management. This would suggest a disturbing and unacceptable culture and an organisation which believes it is beyond scrutiny; accountable to no one other than Treasury Ministers who, alas, have displayed the same attitude throughout this saga, often, it seems, by being fed misinformation by HMRC but also, as is now clear, content to deliberately seek to mislead over the Loan Charge.

The Civil Service Code and the Ministerial Code

291. The Civil Service Code for civil servants, in the section on Honesty, states:

You must:

- set out the facts and relevant issues truthfully, and correct any errors as soon as possible
- use resources only for the authorised public purposes for which they are provided

You must not:

- deceive or knowingly mislead ministers, Parliament or others
- be influenced by improper pressures from others or the prospect of personal gain

292. The Loan Charge Inquiry concludes that there is strong evidence to show that senior HMRC officials have broken the Civil Service Code.

293. The way HMRC has conducted itself over the Loan Charge from start to finish, including with regard to the wilful and chronic campaign of misinformation, to Parliamentarians and the wider audience, is disgraceful. HMRC has shown a determination to push through a deeply questionable policy based in part on an evidenced need to cover up their own failings with regards to these arrangements. There must be an independent investigation into this, with the possibility of taking appropriate disciplinary action against any and all HMRC staff who have knowingly been involved. Such behaviour also suggests at a wider level an organisation that has lost its way, is lacking fundamental underlying values and is devoid of proper leadership.

294. The Ministerial Code states the seven principles of public life:

I. Selflessness

Holders of public office should act solely in terms of the public interest.

II. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

III. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

IV. Accountability

- 5 Holders of public office are accountable for their decisions and actions and must submit themselves to whatever scrutiny necessary to ensure this.

V. Openness

- 10 Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

VI. Honesty

Holders of public office should be truthful.

VII. Leadership

- 15 Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

- 20 **295. The Loan Charge Inquiry believes that evidence shows that the Financial Secretary to the Treasury, Mel Stride, has given partial and misleading answers to parliamentary questions but moreover has given deliberately misleading answers to journalists. Furthermore, in refusing to acknowledge both the suicide risk and actual suicides of people facing the Loan Charge, including in on the floor of the House of Commons, we believe his conduct with regard to the Loan Charge has fallen below the standards expected of Ministers and thus is a breach of the principles of the Ministerial Code.**

Refusal to attend Inquiry sessions by HMRC and the Treasury

- 25 296. It is notable that the Financial Secretary to the Treasury, Mel Stride and HMRC both declined an invitation to attend and refused to give oral evidence to the Loan Charge Inquiry.

297. Mel Stride also refused to appear before the Economic Affairs Committee. They took the unprecedented step of inviting Mel Stride to attend a meeting to discuss the Loan Charge.¹⁶⁰ Mel Stride has refused on four occasions to meet with them.

- 30 298. Chair of the Economic Affairs Committee, Lord Forsyth of Drumlean has said in an interview with the Financial Times¹⁶¹:

¹⁶⁰ [https://www.parliament.uk/documents/lords-committees/economic-affairs/Chairman%20to%20Financial%20Secretary%20\(31%20October\).pdf](https://www.parliament.uk/documents/lords-committees/economic-affairs/Chairman%20to%20Financial%20Secretary%20(31%20October).pdf)

The Treasury and the Chancellor have been tin-eared and have just turned a blind eye to what is happening...The governor of the Bank [of England] comes to our committee at least once a year; the Chancellor comes at least once a year; and yet the junior minister in the Treasury, the Financial Secretary, Mel Stride, has now refused to come to our committee on four occasions,” said Lord Forsyth. “[Accountability for HMRC] is not being provided by the Treasury who have a conflict of interest in that they want to maximise revenue. But the ministers as elected politicians ought to be concerned that there is fair dealing and that taxpayers are treated fairly.

Finance (No. 3 Bill) New Clause 26 and the expected Loan Charge review

299. In January 2019, an amendment was tabled to the Finance (No. 3) Bill by the Loan Charge APPG Chair, Rt Hon Sir Ed Davey MP. The wording of the New Clause 26 (NC26) would require the Treasury to review the effect of the changes made by section 79 and 80 and compare them with other legislation relating to the recovery of lost tax including specifically the Loan Charge provisions of Schedules 11 and 12 to the Finance (No. 2) Act 2017.¹⁶²

300. However the intention of the new clause, as the Government knew full well, was to force a review of the Loan Charge by the only parliamentary means to do so, within the very restrictive rules surrounding amendments to Finance Bills. The wording of New Clause 26 was the only wording allowable by the Public Bill Office. The intention of the review was made clear before the Report Stage, at which it was debated and then accepted by the Government (without contest as they were facing defeat over it) with many Conservative and DUP MPs supporting it.

301. As well as the intention of NC26 being clear, it was also understood by MPs that the Government had accepted to do a genuine review of the Loan Charge that would happen before the report was produced.

302. Sir Ed Davey MP, now Chair of the Loan Charge APPG, made clear his intention in the debate on 8th January 2019 regarding NC26, that a genuine review would consider amending or scrapping the Loan Charge:

“I believe that the review envisaged in the new clause would reveal the unfairness of the retrospective nature of the current Loan Charge legislation in two ways...Let me remind the House why the Treasury should, after the review, ditch the retrospective nature of this measure, delay April’s implementation and amend the charge so it focuses only on

¹⁶¹ Tory peer urges ‘tin-eared’ Treasury to rethink Loan Charge – Financial Times (18th March 2019) <https://www.ft.com/content/90157c9a-4680-11e9-b168-96a37d002cd3>

¹⁶² Finance (No. 3 Bill) NC 26 https://publications.parliament.uk/pa/bills/cbill/2017-2019/0304/amend/finance3_rm_rep_0103.15-21.html

payments made after 2016...I really hope that the Minister will get to his feet, accept the new clause, go ahead with the review and bring it back before the end of the tax year, so that the House can see it and vote on it.¹⁶³

303. In the same debate¹⁶⁴, Anne Main MP stated:

- 5 “I say to the Minister: if we do nothing else tonight, can we accept new clause 26?... We clearly need a review, and I hope the Minister takes that on board and accepts new clause 26. If it is pressed to a vote, I shall vote for it”.

304. The following day, 9th January 2019, at Prime Minister’s Questions, Sir Ed Davey made clear that a review was required. The Prime Minister mentioned a review twice in her answer and
10 claimed that it had been accepted by the Government:

Sir Ed Davey MP: ...They united to back my proposal for a review of retrospection in a law called the Loan Charge... In her role as First Lord of the Treasury, will the Prime Minister agree to meet me and a cross-party delegation of MPs to discuss the new review of the Loan Charge?¹⁶⁵

- 15 Theresa May MP: ... On the question he puts about the review of the Loan Charge... Actually, the Government accepted his review into the Loan Charge.¹⁶⁶

305. Parliamentarians across the political spectrum also made clear that they understood that NC26 meant a review of the Loan Charge and that this would be genuine.

- 20 ➤ At Treasury Questions on 29th January, Andrea Jenkyns MP asked about the review:
“What assessment has the Chancellor made concerning an immediate suspension of the Loan Charge and all settlement discussions within an appropriate period, to allow the Loan Charge review to be properly conducted and any recommendations to alter the legislation to be implemented?”¹⁶⁷
- 25 ➤ At the Finance Bill reading on 7th February 2019, two peers made speeches which clearly show that they understood that a review would be taking place: Lord Tunnicliffe said,
“The realisation that all is not right has now dawned on the other place, which is

¹⁶³ [https://hansard.parliament.uk/commons/2019-01-08/debates/1EC25998-330C-40DB-BEFB-1EF707727120/Finance\(No3\)Bill](https://hansard.parliament.uk/commons/2019-01-08/debates/1EC25998-330C-40DB-BEFB-1EF707727120/Finance(No3)Bill)

¹⁶⁴ [https://hansard.parliament.uk/commons/2019-01-08/debates/1EC25998-330C-40DB-BEFB-1EF707727120/Finance\(No3\)Bill](https://hansard.parliament.uk/commons/2019-01-08/debates/1EC25998-330C-40DB-BEFB-1EF707727120/Finance(No3)Bill)

¹⁶⁵ <https://hansard.parliament.uk/Commons/2019-01-09/debates/F5F36C4D-4BAD-42E0-82DA-34020AC3C970/OralAnswersToQuestions>

¹⁶⁶ <https://hansard.parliament.uk/Commons/2019-01-09/debates/F5F36C4D-4BAD-42E0-82DA-34020AC3C970/OralAnswersToQuestions>

¹⁶⁷ <https://hansard.parliament.uk/Commons/2019-01-29/debates/B9838060-EC9C-407E-8A1F-049213FB9281/2019LoanCharge>

evidenced by the amendment to this Bill on Report by Sir Edward Davey requiring the Government to report back by 30 March on the effects of the Loan Charge scheme.”¹⁶⁸

Baroness Kramer stated, “The Motion tabled by my colleague in the other place, Sir Edward Davey, to force the Government into reviewing the impact of what they are doing...”¹⁶⁹

- During a Treasury Statement by Mel Stride MP on the 4th March 2019, Bob Neill MP made clear that the House was asking for a review and that a delay to the Loan Charge was necessary to achieve it: “The Government accepted a new clause to the Finance Act 2019 relating to a review of the Loan Charge. For that to be meaningful, it must have an independent element and must be given time to do its work. Would not common justice indicate that the sensible thing for the Revenue to do would be to use its discretion to suspend the implementation of the Loan Charge against individuals until the review has been fully completed and its conclusions fully digested and debated?”¹⁷⁰

306. In addition to oral contributions from MPs and peers, a number of Written Questions have been tabled since NC26 was passed:

- Zac Goldsmith MP tabled: Whether the Government's review of the Loan Charge is planned to (a) seek external evidence about, (b) evaluate all aspects of and (c) be able to recommend any changes to the Loan Charge.... that members of the public can contribute to the review of the 2019 Loan Charge.¹⁷¹
- Grant Shapps MP tabled a question that asked about a “delay the Loan Charge settlement day until after the conclusion of the review of that charge”¹⁷²

307. The Chair of the Loan Charge APPG wrote to the Chancellor on 19th February 2019 following a meeting on the 31st January and specified clearly what would be required for a review of the Loan Charge to be regarded as genuine:¹⁷³

We wish to ask you to ensure that the review includes, as it should, the following aspects:

Human Impact

It is now established, through Freedom of Information requests, that no estimate of the number of bankruptcies was done nor how many families would suffer breakdown. The

¹⁶⁸ [https://hansard.parliament.uk/Lords/2019-02-07/debates/68322B96-3913-4AA4-B7E8-B5A7A71EB228/Finance\(No3\)Bill](https://hansard.parliament.uk/Lords/2019-02-07/debates/68322B96-3913-4AA4-B7E8-B5A7A71EB228/Finance(No3)Bill)

¹⁶⁹ [https://hansard.parliament.uk/Lords/2019-02-07/debates/68322B96-3913-4AA4-B7E8-B5A7A71EB228/Finance\(No3\)Bill](https://hansard.parliament.uk/Lords/2019-02-07/debates/68322B96-3913-4AA4-B7E8-B5A7A71EB228/Finance(No3)Bill)

¹⁷⁰ <https://hansard.parliament.uk/Commons/2019-03-04/debates/4C75E77E-BA6A-423E-8A92-CC5D843BC32A/TaxAvoidanceEvasionAndCompliance>

¹⁷¹ <https://www.theyworkforyou.com/wrans/?id=2019-01-18.210060.h&s=%22loan+charge%22#g210060.q0>

¹⁷² <https://www.theyworkforyou.com/wrans/?id=2019-02-12.220152.h&s=%22loan+charge%22#g220152.q0>

¹⁷³ <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/2019-02-19-Letter-from-Loan-Charge-APPG-to-the-Chancellor-following-meeting.pdf>

sole assessment was that the Loan Charge would not impact the wider population in such a manner.

Hence it is vital that your review establishes:

- 5 • The impact on those facing the Charge, including family breakdown and mental health issues
- The expected number of bankruptcies
- The revised estimate of how much the Loan Charge will actually raise when taking into account the bankruptcies and the people who simply cannot pay the sums requested

10 **HMRC**

There remain serious concerns about HMRC and how they are both calculating liabilities and pursuing those facing the Loan Charge.

It is therefore vital that your review establishes:

- How HMRC have calculated liabilities
- 15 • The activities and conduct of HMRC in dealing with those affected
- The reality and affordability of HMRC's repayment plans
- Action against promoters of arrangements
- 20 • The overall estimate of how much the Loan Charge will actually contribute to the Exchequer, which should be the revised estimate as above, less the projected cost to the taxpayer in terms of bankruptcies, the loss of tax of those unable to work again due to bankruptcy and mental breakdown, those who emigrate and those who commit suicide - none of whom will pay tax going forward. Only this figure, not yet estimated, will reveal the genuine amount the Loan Charge will actually raise.

25 It is notable that the Treasury ignored this and what took place was not a genuine review.

308. However, the Government made clear, before they published their document, that no such review was taking, or would take, place. Instead a report would be produced that reviewed the effect of changes made to the time limits for assessment where tax loss arises in relation to offshore tax, and would compare these with other legislation including the charge on disguised remuneration loans. An HMRC document, in newsletter format to advisers, confirmed that despite NC26 the Loan Charge would come in unchanged.¹⁷⁴ Similarly, an answer to a written Parliamentary Question in the House of Commons also confirmed this.¹⁷⁵

¹⁷⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780756/Agent-Update_70.pdf

¹⁷⁵ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-02-12/220152/>

309. Ross Thomson MP, Vice Chair of the Loan Charge APPG, asked a question at Prime Minister's Questions on 6th March 2019 that made clear the dismay of the Loan Charge APPG and other Parliamentarians upon the realisation there was no genuine review of the Loan Charge. He accused the Treasury of acting in "bad faith" over the review:

5 On 9 January the Prime Minister said that the Government accepted the review into the Loan Charge, yet the all-party group on the Loan Charge was only advised this week by the Treasury that there is no such review. The Treasury has acted in bad faith, so will my right Honourable Friend now personally intervene to ensure a genuine review and an urgent delay of the Loan Charge, so that the review, as promised, can be carried out?

10 310. The Treasury released a report on 26th March 2019 entitled, '*Report on time limits and the charge on disguised remuneration loans*¹⁷⁶. This report was clearly not a review and did nothing to address the points raised in the letter dated 19th February apart from reiterate statements that had previously been made.

15 **311. The Treasury deliberately undertook a narrow interpretation of the New Clause 26 of the Finance (No. 3) Bill to avoid conducting a genuine review of the Loan Charge and its impact. In taking this approach, the Government cynically and deliberately chose to ignore the concerns of many members of both Houses, who placed their expectations of a full and proper review on the public record. There is a clear pattern of avoiding scrutiny which is unacceptable and shows that the Treasury did indeed act in bad faith.**

20 312. The Treasury report also contained an accusation in which they totally misrepresent what was agreed in a meeting on 31st January 2019 between officers of the APPG, the Treasury and senior members of HMRC. It was agreed that the identity of witnesses making submissions to the Loan Charge Inquiry would only be shared with HMRC where the APPG had been given permission. HMRC stated in the report that the APPG did not meet this commitment. This
25 accusation is completely false. The APPG did exactly what was agreed and shared some seventy submissions with HMRC on the 8th March. In contract, the APPG received no further correspondence, nor a single response, from HMRC regarding these submissions.

313. For HMRC and the Treasury to suggest the APPG reneged on their commitment, is a false claim and it is reprehensible that they have made such false claim. All documentation clearly shows that the APPG did exactly what was agreed and it is HMRC who reneged on this.¹⁷⁷

314. **For a Government Body and Government Department to make such false claims demonstrates how they have become out of control with regard to the Loan Charge. They have put an increasingly desperate desire to justify and force through the Loan Charge ahead of basic integrity and the essential principles of public service.**

315. **The Loan Charge Inquiry concludes that an independent review, with the power to summon witnesses, is now urgently required in order to ensure that the Loan Charge is thoroughly examined and that the consequences of this policy are understood by Parliament. The inescapable and overriding conclusion from the whole implementation of the Loan Charge and the post-implementation justifications, is that nothing that HMRC or the Treasury say with regard to the Loan Charge can be trusted.**

15 **9. Conclusion and key recommendations**

The Loan Charge Inquiry's key findings can be summarised as follows:

Impact of the Loan Charge – a clear and serious risk to individuals and families

316. **There is a clear risk to the mental welfare of people facing the Loan Charge, including a known suicide risk. This has to date been ignored by the Treasury and HMRC. There have already been suicides of people facing the Loan Charge, including one acknowledged by HMRC. We believe that HMRC's failure to set up a proper 24-hour counselling helpline, knowing the clear suicide risk of people facing the Loan Charge, was negligent.**

317. **There will be many bankruptcies as a result of the Loan Charge, including people making themselves bankrupt as they believe they have no other option, or it is actually a better option for them than facing a very substantial lifelong debt. Some people will be forced to sell their homes and some people have already sold their homes.**

¹⁷⁷ as per above

318. **Families have already broken up due to the pressure** and many more families face breakdown despite the impact assessment by HMRC claiming there would be no effect on family stability.

319. **There are people who are retired or near retirement whose lives will be ruined by the Loan Charge** as they have no ability to work to pay off the sums being demanded.

The Loan Charge was badly implemented with a negligent impact assessment

320. **The original impact assessment published by the Treasury was flawed and inadequate to the point of being negligent, considering the very real risk to people facing the life-changing sums associated with the Loan Charge.** Statistics were clearly skewed towards and in relation to the total UK population, in order to make the impact on those affected appear insignificant, which is also cynical and a misuse of statistics.

321. The consultation findings were ignored and the whole pattern has been to push the policy through regardless of any criticism.

322. The Treasury and HMRC have ducked proper scrutiny and evaded answering key questions.

These arrangements were not entered as “aggressive tax avoidance”

323. Virtually everyone who knew they were engaging in these arrangements took professional advice and were told that the arrangements were legal (which they were – and are to this date), commonplace and approved.

324. A substantial number of people, especially in the public sector, did not know or understand what the arrangements were or, in some cases, that they were even involved loan payments.

325. The vast majority of people entered into these arrangements not to avoid tax, certainly not to illegitimately avoid tax, but actually on the back of professional advice; due to concerns around IR35 legislation (and not wanting to be deemed a ‘disguised employee’) and wanting to avoid the additional administrative burden of a limited company. This is why people paid significant fees to promoters, which meant that people were not taking home significantly more income overall that compared to running a limited company.

The Loan Charge is retrospective, overrides taxpayer protections and undermines the rule of law

326. HMRC are pursuing people for **closed** tax years, including in some cases where people have only closed tax years. This is against the Taxes Management Act 1970 and against international

principles of tax. **We have found no example of a new tax law being introduced that allows closed tax years to become subject to tax.**

327. In some cases, HMRC failed to open cases when people have made a DOTAS declaration.

328. In some cases HMRC **actually opened an inquiry, then closed it deeming the tax return acceptable**, yet they are now claiming it is not.

329. **The Loan Charge legislation rides roughshod over the entire tax system, undermining longstanding, basic and fundamental taxpayer protections.**

330. The sums that people are now being told they must pay are not proven and, in some cases, rely on HMRC estimates that include years where tax records no longer exist, and when the statutory period for keeping them has passed.

331. Despite saying they would, HMRC are, in many cases, not taking into account the amount of money people paid in fees to promoters, money on which the promoters should have paid business (corporation) tax.

332. The real reason for the introduction of the Loan Charge was to bypass the normal legal processes and to allow HMRC to collect tax where they failed to do their job.

333. The evidence – and their own admissions - show that there was a profound failure on HMRC's part to tackle payroll loan arrangements, hence they pushed for the introduction of a retrospective charge to allow them to seek tax where they were no longer able to do so.

334. It is also clear from their own statements that that the real reason for the Loan Charge is to bypass the legal process and avoid "the need to litigate". This means denying taxpayers the right to challenge HMRC's claims and the right to due process, which is wholly wrong and a very worrying precedent.

HMRC Failures and Conduct

335. Many people have been given wholly inadequate notice of the Loan Charge and now find themselves in desperate situations.

- 5 336. In large numbers of cases which are technically 'open' following an HMRC enquiry, HMRC has utterly failed to act within reasonable timescales – a clear breach of a fair approach to taxpayers. Not only this, but HMRC are opportunistically demanding years, even decades, of accumulated interest, when HMRC have clearly been at fault for their inaction - not the taxpayers.

- 10 337. HMRC have failed to deal with the threat to vulnerable individuals and, in some cases, have **breached their own vulnerable customer guidelines**. Many people have described HMRC's conduct as bullying. The picture painted by HMRC of being helpful and sympathetic is simply not backed up by any of the evidence.

Cynical campaign of misinformation waged by HMRC and the Treasury

- 15 338. The Treasury and HMRC have engaged in a cynical campaign of misinformation to seek to justify the Loan Charge and have failed to answer questions openly and honestly.

339. There have been no convictions of promoters involved in promoting loan arrangements and HMRC and the Treasury have failed to provide any evidence when queried about this point.

- 20 340. There has been so much misleading information from HMRC and the Treasury that it is impossible to trust anything they say with regard to the Loan Charge.

Breach of Civil Service Code and Ministerial Code

341. The Loan Charge Inquiry has concluded that the lack of integrity shown by HMRC officials constitutes a breach of the Civil Service Code.

- 25 342. The Loan Charge Inquiry has concluded that the way the Financial Secretary to the Treasury has handled the Loan Charge, including demonstrably seeking to mislead over convictions that he knew are not related to loan arrangements, constitutes a breach of the Ministerial Code.

Key Recommendations

Urgent announcement of a delay and suspension of the Loan Charge

343. The Loan Charge APPG calls for the immediate announcement of a 6-month delay to the Loan Charge, with HMRC agreeing to withdraw any payment demands already issued and to not
5 issue any new payment demands.

344. While taxpayers and HMRC should continue to have a dialogue, HMRC must make clear that they will now only require receipt of information for payment calculation by September 2019, and payment of Loan Charge demands will only fall due by 31st January 2020, unless Parliament chooses to amend the existing legislation before then. This delay can be easily achieved in practice
10 by instructing HMRC to exercise this discretion, available to Parliament in the Finance Act 2018.

345. There must also be an immediate suspension of all settlement activity by HMRC with all discussions not concluded being regarded as on hold, pending a proper independent review of the Loan Charge.

Amendments to the Loan Charge policy, including legislation where necessary

346. The Loan Charge Inquiry has identified possible solutions to address issues of fairness and breaches in the rule of law:

- **To remove ‘closed years’ (also known as ‘unprotected years’) from the scope of Loan Charge entirely** and any required so-called ‘voluntary’ settlements (that are not voluntary) that may be necessary to avoid the Loan Charge
20
- **To give taxpayers back their statutory rights to defend against HMRC’s enquiries into any ‘open years’.** It cannot be right to remove taxpayers’ statutory rights to defend their actions in a tax tribunal or court under the law, as the law was understood at the time they took those actions
25
- **Offer the option for a 10% full and final settlement rate on any open/protected years for any taxpayers who wish to simply draw a line under the past and move on with their lives.** This would assist HMRC in dealing with their huge backlog of open enquiries into these loan arrangements. Taxpayers who feel they have a strong case would still be able to take their cases to tribunal or court but with the risk that the full tax liability claimed by HMRC may be awarded against them
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- 5
- **The ending of the application of late payment interest rates, on any tax demands relating to tax years before 2015/16.** This is in recognition of the long delays in HMRC progressing their inquiries through no fault of the individual taxpayers
 - **Automatic 10-year Time-To-Pay (TTP) for all taxpayers, without reference to income levels**

An urgent 24-hour counselling helpline for those facing the Loan Charge

347. The Loan Charge Action Group believe that HMRC should set up an HMRC-funded 24-hour mental health helpline, to ensure people facing the Loan Charge (and APNs) have access to counselling twenty-four hours a day.

10 *Independent Review into the Loan Charge*

348. There needs to be a full and proper independent review into the Loan Charge, with powers to summon witnesses.

349. It is recommended that this review is led by an experienced tax judge with the goals being:

- 15
- To examine the Loan Charge as a policy, the legal basis and justification for it and to decide whether the Loan Charge is required or whether HMRC already have sufficient powers to deal with the outstanding cases
- 20
- To properly assess the impact of the Loan Charge on individuals facing it and dependents and families
 - To examine the actions and conduct of HMRC and the Treasury with regard to the Loan Charge
- 25
- To consider changes to the Loan Charge legislation as determined by the findings of the review
 - To make any wider recommendations for reform of how HMRC is operating, and its powers, especially in relation to keeping tax years open almost indefinitely

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HMRC culture, leadership and powers

350. HMRC's conduct around the Loan Charge indicates that HMRC is an organisation out of control and one that urgently needs a new manner of Parliamentary scrutiny. In the short-term there needs to be a proper investigation of the way HMRC has behaved with regard to the Loan

35

Charge and with officials who are found to have been involved in deliberate misinformation facing appropriate disciplinary action.

351. The Treasury and HMRC should appear as a matter of urgency before the House of Commons Treasury Select Committee, specifically and only regarding the Loan Charge. They should be asked the questions they have so far refused to answer properly and honestly and should not be permitted to sidestep them or merely regurgitate the same information, now shown to be misleading.

352. The Loan Charge Inquiry backs the recommendation of the House of Lords Economic Affairs Committee (EAC) for a 'Powers Review' into HMRC and for changes to make HMRC more accountable. Specifically, we back the EAC's key recommendations:

- The Government should consider widening the role of HMRC's Adjudicator or increasing HMRC obligations to respond to and act on Adjudicator recommendations
- The Treasury should assess whether HMRC is adequately resourced to fulfil its Charter obligations in the next Spending Review.

353. The Loan Charge Inquiry also believes there must be an independent investigation into the conduct of HMRC with regard to the Loan Charge (separate to the wider independent review into the Loan Charge), with the possibility of taking appropriate disciplinary action against any and all HMRC staff who have knowingly been involved in misrepresentation of information, misinformation and failing to properly predict the realistic impact of the policy.

354. There also needs to be proper independent assessment of HMRC's use of behavioural psychology and behavioural insights, the knowing use of which should be suspended in the light of the suicide risk and the known suicides of individuals facing the Loan Charge.

Appendix A: Loan Charge Inquiry Survey Report

<http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Loan-Charge-APPG-Loan-Charge-Inquiry-Survey-Report-March-2019.pdf>

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Appendix B: Exchange of Letters with HMRC regarding suicides

<http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Letter-from-Loan-Charge-APPG-letter-to-Sir-Jon-Thompson-re-suicides-11-March-2019.pdf>

10

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785948/Letter_from_Sir_Jonathan_Thompson_to_the_Loan_Charge_All_Party_Parliamentary_Group_-_13_March_2019.pdf

15

<http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Letter-from-Loan-Charge-APPG-reply-to-Sir-Jon-Thompson-re-suicides-15-March-2019.pdf>

Appendix C: Inquiry Written Evidence – links to repository

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Professional submissions:

<https://ln.sync.com/dl/b38e587d0/pd4z9ah2-8akfbx2j-ktibtp4y-sfdqk3xm>

Public submissions:

<https://ln.sync.com/dl/ffd4baf00/2459fzgw-2nkqmqr-fbagyd6me-yyxq2jge>

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Redacted and anonymous submissions:

<https://ln.sync.com/dl/c14ffd750#znqzvkcj-t6g4na2-s9qabqvp-4eidg7di>

Appendix D: Inquiry Oral Evidence – links to transcripts

<https://ln.sync.com/dl/24e47e230#9u6km3xs-3rpk4v8z-xr7wyass-uydaprmx>

5 Appendix E: Additional Evidence Submissions – links to repository

<https://ln.sync.com/dl/08926ee00/dmdpahmr-eggqh4ec-rykirkpc-vn772bzv>

<https://ln.sync.com/dl/8830a7290/y5ij4mar-udrc3g2z-cw36ssw9-5dd6etbp>