Loan Charge All-Party Parliamentary Group

Loan Charge Inquiry

Update

November 2019

This Report was researched and written by the Loan Charge APPG. The Loan Charge APPG Secretariat is staffed and funded by the Loan Charge Action Group.

Contents

Summary and key recommendations

Since the original Loan Charge APPG inquiry into the Loan Charge, the legislation has now come into effect as at 5th April 2019, and a significant amount of new evidence has been received from individuals who are impacted by the Loan Charge, or from their families. The additional findings and recommendations of the Loan Charge APPG are summarised below.

Key findings of the Loan Charge APPG since 5th April 2019 can be summarised as follows:

1. **The risk of additional suicides is increasing as the due date for payment of the Loan Charge approaches.**
   - We have been sent evidence of seven cases of suicide of people facing the Loan Charge, with four further cases coming to light since April 2019.
   - The suicide risk remains high and people are showing signs of severe distress.
2. **The level of service provided by HMRC to vulnerable individuals is inadequate.**
   - The demand for a counselling service has gone unheeded. Meanwhile levels of distress have increased.
     Bereaved families are not having their cases dealt with either quickly enough or with sufficient compassion by HMRC.
3. **There is still a high risk of bankruptcy, forced house sales and family breakdown.**
   - The number of bankruptcies is only going to increase in coming months and as the January deadline draws near.
   - Significant numbers of people will be forced to sell their homes to pay HMRC as the amounts are simply not affordable, even with long TTP agreements.
   - The HMRC impact assessment was negligent with regard to this issue.
4. **HMRC have failed to conclude settlements in a timely manner, thereby resulting in a number of impacts to individuals.**
   - Only 8,000 settlements had been concluded by June 2019, over three years after the announcement of the Loan Charge.
   - HMRC clearly underestimated the scale and/or complexity of the task and were not prepared. It is unlikely that settlements will be concluded by January 2020.
   - The failures of HMRC with regard to settlements have resulted in intense stress and anxiety.
   - Changing HMRC deadlines and the failure of HMRC to conclude settlements have left individuals facing the Loan Charge confused as to what they are required to do.
5. **HMRC are continuing to issue Time-To-Pay (TTP) instalment plans that are simply unaffordable.**
   - The automatic TTP terms will result in people agreeing to unaffordable payment plans and HMRC are, or should be, aware that this is the case.
   - The TTP settlements proposed by HMRC are, for the overwhelmingly majority, unaffordable.

6. **The Loan Charge reporting requirements were unclear and were not suitably communicated by HMRC to all taxpayers.**
   - Inadequate communications from HMRC and a confusing series of reporting deadlines has resulted in taxpayers not fulfilling disclosure requirements, for which they will be penalised.
7. **Roll out of the IR35 'off-payroll' rules to the private sector, will impact the ability of individuals to complete their settlements or pay the Loan Charge.**
   - The new legislation due to come into force in 2020 is already having an impact on incomes.
   - If the legislation goes ahead, this will mean many people will not be able to settle or to pay the Loan Charge.
8. **Enforcement activity by HMRC relating to Accelerated Payment Notices (APNs) and other demands appears to have increased.**
   - This enforcement is unnecessary when people are already discussing settlements.
   - HMRC are using APNs as a "nudge" for people to settle even during the Review.
9. **More evidence of unreasonable and incompetent behaviour by HMRC.**
   - Examples of poor conduct by HMRC are commonplace for those facing the Loan Charge.
   - HMRC have conducted themselves poorly through the settlements process and well short of the professionalism that is expected of them.
10. **The Loan Charge has not met its objective of helping people to "get out of tax avoidance for good".**
    - The Loan Charge provided no incentive for the population at large to forgo tax planning arrangements as it was neither widely publicised nor communicated to those it impacted.
    - The promoters of Loan arrangements were not targeted by the Loan Charge and have continued, for the most part, to offer similar or other forms of tax planning arrangements.
    - The IR35 reforms will help drive demand for such tax planning arrangements.
11. **The Treasury and HMRC continue to make misleading statements and announcements regarding the Loan Charge and its impact.**
    - The amounts due from the Loan Charge are not the billions of pounds claimed.
    - The burden of paying has been falsely portrayed as falling mainly on employers.
    - The APPG believes that there have been breaches of the Civil Service Code and the Ministerial Code.
    - Announced changes to the Loan Charge policy have not had any meaningful impact.

New Recommendations:

The APPG reiterates the recommendations in the original inquiry report published in April 2019 (these are restated in Section 2).

In addition, the APPG is adding the following recommendations:

1. **An urgent delay and suspension of the Loan Charge, scrapping the 31st January 2020 date for declaration on tax returns and paying the Loan Charge.** This recommendation is especially important in light of the General Election, which means that the Loan Charge Review will report whilst Parliament is not sitting and cannot consider the review's findings and recommendations. The incoming Government will not realistically be able to implement its findings before the Loan Charge becomes payable. The 31st January date is therefore now illegitimate and wholly unfair. It must be abandoned to allow proper consideration by the next Parliament and by the incoming Government of the Loan Charge Review findings. The deadline must be abandoned to allow time to implement the recommendations of the Review.
2. Alongside this, there must also be **a suspension of all related HMRC activity**, with HMRC agreeing to suspend all Accelerated Payment Notices (APNs) already issued and not to issue any new payment demands including APNs.
3. **A specialist bereavement unit is put in place** to swiftly resolve outstanding tax disputes after someone has died.
4. **Investigation to assess why HMRC failed to adequately resource the Counter Avoidance department** to deal with the settlements process.
5. **Rationalisation of the tax legislation for self-employed contractors** to simplify the distinction between the tax status of employed and self-employed people.
6. **A full, independent inquiry into the Loan Charge scandal is required.** This must properly and fully examine the whole issue, in a reasonable timescale, and specifically it must investigate the behaviour of HMRC. The scope of the inquiry must include a review of the treatment of taxpayers. It must also include the conduct of, and communication by, HMRC and the Treasury.

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 came into force on the 5th April 2019.[1] At the current time, without a suspension or amendment, the Loan Charge must be paid by 31 January 2020. After this, HMRC may seek to levy penalties and interest.

2. The Loan Charge APPG is clear that people should pay the right amount of tax and believes the Government should clamp down on any tax evasion and should properly resource HMRC to do this. We also believe that the Government should quickly close any identified loopholes that allow for unacceptable avoidance on a prospective basis. However, there is increasing concern about the Loan Charge in terms of its fairness and its impact. In the main due to its retrospective effects.

Scope of this Report

3. This report provides an update to the original Loan Charge Inquiry report that was published in April 2019. The original inquiry looked into the fairness and impact of the Loan Charge. A link to the previous report can be found in Appendix A of this document. This report covers new information that has come to light in the seven month period from April 2019 to October 2019.

4. Since the original inquiry, the Loan Charge has come into effect as at 5th April 2019 and the deadline of 1st October 2019 for taxpayers to submit their Loan Charge disclosures has passed. Since the original inquiry, the Loan Charge APPG has received a significant amount of additional evidence from individuals who are impacted by the Loan Charge. Most evidence has been received as a result of individuals sending emails and in some cases new impact statements directly to the Loan Charge APPG's inbox.

5. Statistics have also been captured from a second survey that was sent out by the Loan Charge APPG on 23rd October 2019 and ran for five days until 28th October 2019. The survey was offered to a broad range of people through the APPG's 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. The purpose of the survey was to gather:

[1] Source: government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans

a) information about the current status of HMRC's settlement process;

b) information about the conduct of HMRC when dealing with individuals facing the Loan Charge;

c) statistics about the numbers of people seeing severe financial impact, mental health impact, suicide risk and family impact, from the policy. This was to enable a comparison and re-assessment of the position compared to March 2019.

6. The content in this report is based on additional evidence received by the Loan Charge APPG since 5 April 2019 and it focuses on the following topics:

- Key deadlines relating to the Loan Charge and Loan Charge reporting, a review of the current status of HMRC's settlement process, and the interaction of the IR35 'off-payroll' rules with the affordability of Loan Charge settlements;
- New evidence of unreasonable and negligent behaviour by HMRC when dealing with individuals who are impacted by the Loan Charge, including enforcement activity of HMRC in relation to APNs;
- The increasing suicide risk due to the Loan Charge, the tragic cases of a number of additional suicides that the APPG has been made aware of, and the response of HMRC;
- Evidence of increasing impact to individuals from the Loan Charge policy in terms of their financial situation, including bankruptcy and forced house sales, and breakdown of families and relationships;
- Whether the Loan Charge legislation has been successful in helping individuals to "get out of tax avoidance", and whether it has had any impact on the market for promotion of tax planning schemes;
- Evidence of further misleading propaganda from HM Treasury and HMRC regarding the Loan Charge, recent statements made by Ministers and the impact of announced changes to the Loan Charge policy.

The Loan Charge Review currently underway

7. The APPG acknowledge that since the last inquiry Sir Amyas Morse, the former head of the National Audit Office, has been appointed by the Treasury to perform a review of the Loan Charge

policy. The review is underway and is due to report back to the Treasury in mid-November 2019. We anticipate that this report and accompanying documents will be of use to the review.

8. The Loan Charge APPG have welcomed this Review and the choice of Sir Amyas to conduct it. However, we have made it clear that we believe that the remit and scope of the review are too narrow. We believe that the narrow scope is likely to have been set by the Treasury in conjunction with HMRC. **We believe that the narrow scope is deliberate so as to avoid the essential scrutiny and investigation into the 'Loan Charge scandal' as a whole and very specifically to avoid investigation of the role, and conduct, of both the Treasury and HMRC.**

9. The scope of the review has been restricted to cover the topic of "whether the Loan Charge, as it applies to individuals who have directly entered into disguised remuneration schemes, is an appropriate response to the tax avoidance behaviour in question". The APPG believe the wording of the scope is an attempt to deliberately exclude any examination of HMRC and Treasury conduct, including HMRC's shocking treatment of taxpayers and their administrative failures in administering the Loan Charge. **Without investigating this and the way HMRC are treating people, it is impossible to review the Loan Charge as a policy.**

10. The documented scope of the review does not appear to encompass the wider but fundamental issues, most notably whether the Loan Charge undermines the rule of law by seeking to impose HMRC's own interpretation of the tax legislation, without such opinions having been yet tested by the courts. It has never been determined what, if any, tax is due from the various parties in these quite complex arrangements, despite HMRC's misrepresentation to the contrary. The scope of the review also leaves out HMRC's use of APNs. These have been issued en masse in an apparent attempt to bully taxpayers into submission. This needs to be investigated.

11. Very notably, the Terms of Reference of the review also omit investigation of the crucial question as to how and why the Loan Charge was introduced in the first place and the history of HMRC's inaction over loan arrangements. This should include the fact that HMRC opened investigations many years ago and then proceeded to do nothing year after year, thus implying acceptance via their own complacency.

12. In addition, there is some ambiguity in the Terms of Reference around the repeated use of the phrase "…impact of the Loan Charge on individuals who have **directly entered into disguised remuneration schemes**" [emphasis added]. The APPG has heard from professionals that this phrase could be interpreted in a variety of ways, but it appears that the Terms of Reference only allow for the review to consider one tranche of people impacted. We have been unable to

determine who is covered by this description and who is not. This leaves an unacceptable ambiguity with regard to who can pause settlements in order to await the outcome of the review. If the Loan Charge is unacceptable for one group of taxpayers, then it is unacceptable for all. The Reviewer should have the power to determine this.

13. We have also made clear that it is inappropriate to have HMRC involvement in the Loan Charge Review. It is wholly unacceptable to use HMRC and Treasury staff to support this Review. The Terms of Reference state that, aside from Sir Amyas, the staff for the review will be 'on-loan' from HMRC and the Treasury. The APPG believes that it is totally inappropriate that the support staff for the review be sourced from either HMRC or the Treasury. Given the nature of the Loan Charge, the use of any HMRC and Treasury staff could, in our view, negate the validity of a genuinely independent review.

14. The Terms of Reference also give a key role to the Director of Personal Tax, HM Treasury. This individual will agree the number of staff working on the review, and presumably also which individuals. The individual will also have the final decision, in consultation with HMRC, on whether the Treasury and HMRC are properly supporting the review by supplying required information. We have been unable to ascertain who is the Director of Personal Tax, HM Treasury, or indeed whether such a role even exists. We require some clarification, including details of whom this person reports to. We find it totally inappropriate that this review, which is titled as independent, is still beholden to the goodwill of the Treasury and HMRC. It can hardly be independent if the only oversight comes from within the organisations which it should rightly be investigating.

15. The Introduction to the Terms of Reference of the current review are biased, based on HMRC and Treasury opinion, and are not based on fact. The wording suggests a clear attempt to prejudge the reasons why people entered the arrangements using emotive terms such as "disguised remuneration" and "contrived tax avoidance schemes". It says that "tax avoidance behaviour" is unfair to others, thus presenting the government's opinions as fact. The Terms of Reference of an independent review should not seek to prejudice the review. It is wholly inappropriate and unacceptable that the introduction written by the Treasury seeks to prejudice the review, by presenting their position as right all along.

16. The APPG is also concerned that the Terms of Reference clearly suggest that the review will be dictated by the Treasury behind the scenes. It states, "**the timing and manner of the publication will be determined by the Chancellor of the Exchequer**; the Reviewer is expected to use their discretion and will have the final say on the content of the report". [emphasis added] It also states that, "the Reviewer has the final say on what is published in the report". It suggests that Ministers,

HMRC and Treasury officials will be involved in the content of the report and what is published, which is entirely inconsistent with an independent review. It strongly suggests that there will be prior stages of writing the report that could involve the Treasury and HMRC, if this is the case then the review and final report would not be deemed reliable, independent or genuine. **We hope that the review and report are all of these things. We also hope that Sir Amyas is allowed to ensure that it is. But, the final report must make clear what involvement and input there has been from HMRC and the Treasury in the review. It must give details of the discussions that were held regarding what is actually published.**

Officers of the Loan Charge APPG

17. The Officers of the Loan Charge APPG in the current 2017-2019 Parliament are:

- 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/

18. The Secretariat of the Loan Charge APPG is provided by the Loan Charge Action Group.

2. Findings and recommendations from the original Inquiry

19. The key findings and recommendations of the original Loan Charge inquiry are listed below. A link to the full Inquiry Report April 2019 can be accessed under Appendix A.

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Summary and key recommendations - *Original APPG Inquiry Report*

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 tackles 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 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 were:

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 transaction

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.**

3. Loan Charge reporting requirements for individuals

20. The original inquiry was conducted before the Loan Charge came into effect on 5th April 2019 therefore it did not look in detail at the Loan Charge reporting requirements that would be required after that date.

21. Since the Loan Charge came into effect, individuals (and companies) who are preparing to pay the Loan Charge have been/will be required to meet various Loan Charge reporting deadlines up to 31st January 2020.

22. The delays by HMRC in completing ALL settlement agreements by 31st August 2019 have caused confusion for individuals who are unsure if the Loan Charge and associated reporting requirements will apply to them. It is important for individuals to make the right decisions to avoid the significant penalties that are specified in law for failure to meet the disclosure requirements. The uncertainty around the disclosure requirements for those still in the settlement process has caused, and is still causing, significant anxiety and distress.

Key Loan Charge reporting requirements and deadlines

23. **On 5th April 2019** the Loan Charge became due under the legislation. Those with outstanding loan balances that HMRC deemed to be income, and who had not already settled were liable to the Loan Charge from this date. However, as is the case with much of the tax system, the date that the charge had to be paid comes much later, in January of the following year, 2020.

24. Unfortunately, HMRC were unable to process all settlement agreements by 5th April 2019. HMRC have stated that individuals who have been unable reach a settlement agreement due to delays on the part of HMRC, and who subsequently settle, will not be required to pay the Loan Charge. This leaves an open question for those individuals who have not received settlement figures yet and hence do not know if they can afford to settle or not.

25. On **26th February 2019**, just a few weeks before the Loan Charge came into effect, HMRC first published guidance[2] on “How to report details of your disguised remuneration loan scheme and account for your Loan Charge liability”. The guidance has been updated three times since it was

[2] Source: https://www.gov.uk/guidance/report-and-account-for-your-disguised-remuneration-loan-charge

first published and since the Loan Charge came into effect, once on 5th April and twice in June 2019. The key reporting requirements are listed below.

26. On **15th April 2019**, individuals who were contractors or employees of UK based companies were required to notify the company about their outstanding loans so that the company could pay the tax. This reporting requirement was not well publicised by HMRC.

> *"As well as telling HMRC about your outstanding disguised remuneration loans, you must also tell any employers you had loan arrangements with or who put arrangements in place from which you benefited.*
>
> *You must do this by 15 April 2019. If you do not, you must let HMRC know.*
>
> *If the relevant employer is based in the UK they should report and pay any disguised remuneration Loan Charge on your behalf. If this tax can be deducted from any payments your employer makes to you, they will do this through PAYE."*

27. By **19th April 2019** (post) **or 22nd April 2019** (online) UK employers were required to report the loans on a Real Time Information (RTI) submission and pay the PAYE liability (including National Insurance contributions) to HMRC. If payment was not made on time, late payment interest would be due.

28. By **4th July 2019**, where employers had settled the tax on behalf of the contractor or employee, and where the contractor or employee had not reimbursed the employer for the PAYE liability at this date, then a s222 charge became payable. The s222 charge was payable because the payment of the Loan Charge by the employer was considered a notional payment. According to the guidelines, if the employer could not pay the Loan Charge, then HMRC would require the contractor / employee to pay both the s222 charge and the Loan Charge.

> *"If your employer cannot deduct this tax from your pay, you should agree how you're going to repay them before 5 July 2019. This is known as 'making good'. If you do not do this, you may incur a charge.*
>
> *HMRC will first go to the employer who provided you with your disguised remuneration loan to collect the Loan Charge. If they cannot pay the Loan Charge, HMRC may transfer this charge to you in the future. If this happens you may have to pay the Loan Charge and the additional tax charge."*

29. The deadline of **31st August 2019** was never published in writing on HMRC's guidance for settlements or for Loan Charge reporting. However, the deadline was communicated to the Loan

Charge APPG in a letter from Ruth Stanier[3] dated 6th March 2019, as the date by which individuals needed to agree settlements with HMRC in order for the Loan Charge to not be applied. This date was also frequently repeated by tax advisers and accountants. HMRC was not able to conclude settlement discussions with ALL individuals by this date.

30. The APPG has received evidence from individuals via email that showed in early August HMRC were already starting to send settlement correspondence where the date by which a response was required was in September 2019, i.e. after the 31st August 2019 deadline. It appears that HMRC never acknowledged or announced that they would run out of time, until it was too late.

31. **1st October 2019** was the deadline for taxpayers to fill out an online form to disclose the details of their loans. There are penalties for failure to complete this disclosure. There were reports in the days leading up to this deadline of issues with the online tool failing to respond to users attempting to report their loan details.

32. **5th October 2019** was the deadline for taxpayers to register for self assessment, if they were not already registered.

33. **31st October 2019** was the deadline for submitting paper self assessment tax returns for the 2018-19 tax year. This would include disclosures for paying the Loan Charge, where it applies.

34. The next upcoming deadline that individuals are facing is **31st January 2020**. This is the deadline for paying the Loan Charge where it applies. It is also the deadline for those taxpayers who submit their self assessment tax returns online instead of in paper format.

35. The two surveys conducted in March and October 2019 by the Loan Charge APPG have found that a third of respondents have never received any formal notification regarding the Loan Charge from HMRC, and hence would likely be unaware of the various reporting requirements.

36. In July 2019 the APPG received evidence from an individual who had not been notified by HMRC about the Loan Charge. The individual concerned only found out about the Loan Charge from their promoter after 5th April 2019. They confirmed that, as soon as they found out about the Loan Charge they contacted HMRC, but in July 2019 they were informed by HMRC that they were too late to register for the settlement opportunity and they would need to pay the Loan Charge by 31st January 2020.

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[3] Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784196/Letter_from_Ruth_Stanier_to_the_Loan_Charge_All_Party_Parliamentary_Group.pdf

37. **The Loan Charge disclosure requirements have resulted in confusion and people have not completed disclosures due to inadequate communication from HMRC. This will result in people facing automatic penalties for failure to report, through no fault of their own.**

38. **The delays by HMRC in concluding the settlement agreements before the Loan Charge took effect on 5th April 2019 have also resulted in confusion to individuals who are unclear if they will need to settle or pay the Loan Charge, and hence are unclear if the Loan Charge reporting requirements apply to them.**

4. HMRC settlements and Time-to-Pay arrangements

Current Status of HMRC's Settlement Process

39. The original inquiry found that HMRC was struggling to process the volume of settlement calculations by their own deadlines, despite having had three years to put in place the required processes.

40. At the time of the original APPG inquiry HMRC had already moved its deadlines for completing settlement agreements several times. Taxpayers were originally required to register an interest with HMRC by 31st May 2018 and to send loan details and other required information to HMRC by 30th September 2018. It was expected that settlement agreements would be finalised in late 2018. The deadline to reach an agreed settlement was then moved by HMRC to 5th April 2019. On 6th March 2019 in a letter[4] from Ruth Stanier of HMRC to the Loan Charge APPG, Ms Stanier confirmed that the date for registering an interest was being extended yet again to 5th April 2019 with the date for reaching an agreed settlement extending to 31st August 2019, almost a year later than the original HMRC plans.

> *"…scheme users who come forward with a genuine intention to settle before the 5 April 2019 will not be disadvantaged, and can still benefit from the opportunity to settle under the published terms."*
>
> *"Settlement negotiations must move quickly after 5 April 2019 and **all settlements must then be reached by 31 August 2019, or the Loan Charge will apply**."*

41. Since then, HMRC has also now missed the deadline of 31st August 2019 with a substantial number of cases unresolved. HMRC have stated that no one will be penalised for delays caused by HMRC and has implied that the settlement opportunity will still be available after 31st January 2020 for those who have engaged with HMRC by 5th April 2019 and want to settle. However HMRC have not recently made any commitment for the conclusion of ALL settlement agreements by a specific date.

42. On 10th October 2019 the Government published a response[5] to the conclusions and recommendations of the Treasury Sub-Committee report on 'Disputing Tax'. The information in

[4] Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784196/Letter_from_Ruth_Stanier_to_the_Loan_Charge_All_Party_Parliamentary_Group.pdf

[5] Source: https://www.gov.uk/government/news/government-response-to-the-conclusions-and-recommendations-of-the-treasury-sub-committee-report-on-disputing-tax (see Recommendations 2 and 3 – Government response)

the publication has provided the APPG with some insight into the current status of HMRC's settlement process and the actual number of individuals who have managed to agree settlement with HMRC.

HMRC response to the Treasury Sub-Committee

43. On 10th October 2019 the Government published a response[6] to the conclusions and recommendations of the Treasury Sub-Committee report on 'Disputing Tax'.

44. The response to recommendation 3 re-affirms the number of taxpayers that HMRC say are affected by the Loan Charge as c. 50,000. The response suggests that more than 19,000 of the c. 50,000 taxpayers are in the settlement process, and implies that as at 30th June 2019 HMRC have completed settlements for only around 8,000 taxpayers.

> *"The government estimated that **around 50,000 taxpayers** who have been involved in disguised remuneration (DR) schemes **are affected by the Loan Charge**. Under the DR settlement terms published in November 2017, **more than 28,000 scheme users expressed an interest in settling** their tax affairs, with **over 19,000 returning their settlement packs with the information needed by 5 April 2019**.*
>
> *Since the Loan Charge was announced at Budget 2016, and **up to 30 June 2019, HMRC has agreed around 8,000 settlements** with employers and individuals, bringing into charge around £2 billion."*

45. The response to recommendation 2 acknowledges the delays that taxpayers are facing from HMRC in progressing their settlements. It shows that HMRC has been unable to complete all settlement agreements by 31st August 2019 even where taxpayers have complied with HMRC's requests for all details. It claims that, as at 31st August 2019, fewer than 1% of the c. 19,000 taxpayers are waiting for their calculations.

> *"**HMRC has acknowledged that there have been delays responding to taxpayers** who expressed an interest in settling their use of disguised remuneration tax avoidance schemes.*
>
> *The Contractor Loan Settlement Opportunity prompted a big response. **By 5 April 2019 over 19,000 people had expressed an interest and provided the information needed** to settle their use of disguised remuneration schemes.*
>
> *HMRC deployed additional resources to support the settlement process **and by 31 August 2019 over 99% of users had received their settlement calculations."***

46. The implication in the statement from HMRC is that the "big response" was unexpected and that HMRC are proud of how they have coped. This is demonstrably false. In January 2019, Mary

[6] Source: https://www.gov.uk/government/news/government-response-to-the-conclusions-and-recommendations-of-the-treasury-sub-committee-report-on-disputing-tax (see Recommendations 2 and 3 – Government response)

Aiston gave oral evidence[7] to the Treasury Select Committee and said in answer to a question about the number of cases:

> *"There are about 50,000. There are a lot more to go. In terms of getting calculations out to people, we have issued 9,000, and 7,000 of those are still due to come back. Our past experience with settlement opportunities is that around 75% of those will come back and people will settle. There is a lot more work to do. We always expected that there would be a peak of people coming in February and March."*

47. Earlier in the same January evidence session, Mary Aiston said that the purpose of the Loan Charge was to nudge people to settle. It is clear that HMRC should have expected around 30,000 people to come forward and discuss settlement, even if those people ultimately decided not to settle. The 19,000 people who did come forward were in fact fewer than HMRC should have been prepared for.

48. The response to recommendation 2 also advises that taxpayers will not be disadvantaged due to delays on the part of HMRC.

> *"HMRC continues to support taxpayers who provided the information by 5 April 2019 to settle their cases and will allow sufficient time for them to do this.*
>
> *HMRC has confirmed that no one who provided the necessary information by 5 April 2019 will be disadvantaged if settlement of their case takes longer as a result of HMRC delay.*
>
> *HMRC's systems do not monitor response times for this settlement activity on an automated basis. However, HMRC will publish further information about progress on settling cases in its 2019 to 2020 annual report."*

49. It is clear that the number of settlements concluded has fallen vastly short of HMRC's expectations and that HMRC's continued efforts to present a picture that the settlements are progressing well simply do not reflect reality. Every time they are asked, HMRC state that they are making progress and, until very recently, they put marks in the sand for when they will be finished, only for the tide to wash them away. HMRC's statements that people "will not be disadvantaged" as a result of the failures of HMRC are totally inadequate to make up for the months, even years, of stress that they have faced whilst waiting to discover what HMRC think they owe.

50. **HMRC have failed to properly prepare for the settlement process. This can only be attributable to a lack of proper resourcing or a failure to understand the complexity of the issues underlying the Loan Charge.**

[7] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/tax-enquiries-and-resolution-of-tax-disputes/oral/96049.html

APPG concerns regarding the response of HMRC to the Treasury Sub-Committee

51. The response to recommendation 2 regarding the percentage of users who have received their settlement calculations is inconsistent with the findings of the APPG Survey October 2019. The response to recommendation 2 states that 99% of users had received their settlement calculations by 31st August 2019. This indicates that only c. 190 taxpayers (1% of the 19,000 that HMRC state are in the settlement process) were still awaiting settlement figures on that date. However in October 2019 when asked about the status of their request for settlement figures, a total of 393 out of 2,086 respondents to the APPG survey answered that either HMRC had not sent the figures yet or the settlement figures were received after 30th September 2019. Given the admission by HMRC that their systems "do not monitor response times for this settlement activity on an automated basis" it is possible that this claimed statistics for HMRC's performance is pure hyperbole.

52. With regard to the delays by HMRC in progressing settlements, the response to recommendation 2 also suggests that taxpayers will not be disadvantaged as a result of the delays by HMRC. The APPG is not clear what is meant by the response "will not be disadvantaged" and whether the statement is meant in the context of no financial disadvantage (for example, halting interest and inheritance tax accruals during the period of delay) or simply that there will be no disadvantage in terms of the settlement offer still being made available to the taxpayer with a revised (increased) offer amount due to the passage of time.

53. The APPG is also unclear on the following points, where the responses provided by HMRC to the recommendations of the Treasury Sub-Committee either omitted this information or provided a response that was unclear:

- when will the remaining outstanding settlement calculations be issued, to the estimated c. 1% of the c.19,000 taxpayers who had submitted their information to HMRC before the 5th April 2019 deadline;
- will settlement figures be provided to the other c. 9,000 individuals who registered an interest in settlement but did not return a complete settlement pack;
- by when does HMRC expected to finalise all settlement agreements under the Contractor Loan Settlement Opportunity;
- how many taxpayers are awaiting corrected settlement calculations or responses from HMRC to questions raised.

Ongoing issues faced by taxpayers trying to settle with HMRC

Changing deadlines

54. The original inquiry reported that HMRC had already moved its deadlines a number of times. This is both in relation to taxpayers providing the required information to HMRC, and also for HMRC to provide its settlement calculations and to agree settlement with taxpayers.

55. As mentioned in the sections above the APPG is aware that HMRC has failed to meet its most recent deadline of 31st August 2019 for concluding all settlements. Since the original inquiry, the APPG has seen further evidence of lengthy delays by HMRC.

56. Respondents to the APPG Survey October 2019 were asked to confirm when they received their first set of settlement figures from HMRC. Only 526 of 2,082 (25%) respondents who answered the question had received their settlement figures before 5th April 2019. 723 (35%) respondents received their settlement figures between 5th April 2019 and 30th September 2019. 73 respondents did not receive their settlement figures until on or after 1st October 2019 which is the date that disclosure of loans as required under the Loan Charge reporting requirements. 320 (15%) had still not received settlement figures as of the date of the survey.

57. To better understand the impact of the moving deadlines on individuals facing the Loan Charge, the APPG Survey October 2019 also asked respondents if they had found the changing settlement deadlines problematic. Some of the key recurring themes are listed below.

a. Changing deadlines are causing confusion with individuals who are unclear what they need to do and by when. The problem is exacerbated because HMRC was unable to conclude all settlement agreements before the Loan Charge came into effect on 5th April 2019. As a result many individuals are unclear on whether the Loan Charge will actually apply to them and what Loan Charge reporting requirements they need to undertake.

> *"The dates change with little communication and are very rarely backed up with any practical guidance - you constantly don't know if you are doing the right thing or not with regards to the process."*

> *"Yes, very confusing, as was having to submit loan amounts. You feel someone is trying to catch you out, and with no spare time it is easy to make a mistake."*

> *"I have enquired about settlement and challenged the figures first given but have no idea whether I need to declare the "loans" on my 2019 tax return, if I haven't agreed to a settlement before the end of Jan 2020. I originally asked for a settlement figure in January 2018, but I did not get a response, until October 2018, with some provisional numbers and some forms to fill in. That was met with silence until August 2019 when I asked my MP to try to elicit a response which soon arrived. However, that response contained some confusingly revised figures and a question about whether I had sold a*

property. What it not contain was a definitive settlement figure or any offer of time to pay."

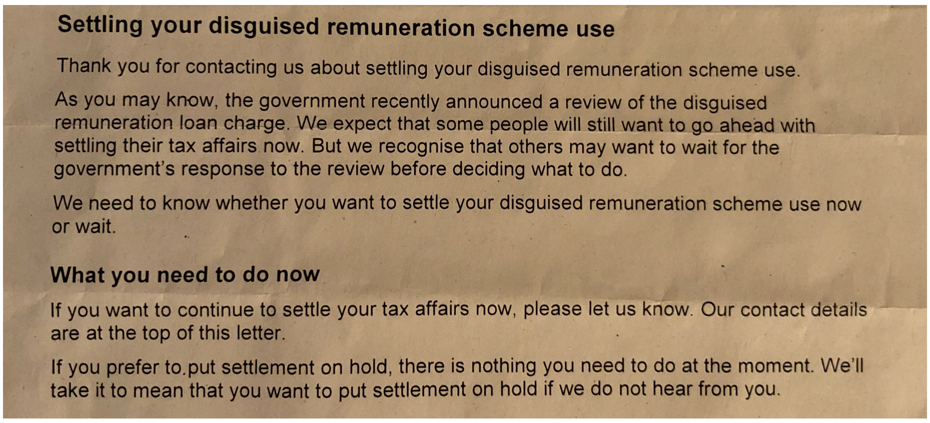
b. The knock on effects of the delays and continually changing deadlines include stress, anxiety and an inability for individuals to plan and move on with their lives.

> *"I am just overwhelmed by it all."*
>
> *"Stressed, tearful and confused. Unsure what action to take and depression sets in. What the Gov website and what the HMRC letters say are difficult to understand for a lay person like me. When you call HMRC helpdesk, it is a different resource each time so advise is not specific to my case as they do not know the details of my case."*
>
> *"The uncertainty is crippling. The goalposts keep changing and I'm not sure what is expected and when it's expected. I'm finding the whole situation extremely stressful."*
>
> *"It's all very unclear. I can't plan my life, I am in limbo."*
>
> *"Uncertainty and anxiety about the extent of the full impact of the final demands and how this would be financed. Not being able to make decisions about my life due to the uncertainty."*

c. Some respondents answered that they found the changing dates had potentially put them in a worse position than others. One person wrote:

> *"Was not given an option to wait until after this review. My settlement date was October 18th for the agreed amount (which included reasonable tax deductions), if NOT paid by the 18th then the GROSS amount was going to be used, around another £12K more"*

In contrast, the APPG is aware that many other individuals who are still in the settlement process have been told by HMRC that their settlements are on hold pending the outcome of the Government's independent Loan Charge review, which is due to conclude in mid-November 2019.



Settling your disguised remuneration scheme use

Thank you for contacting us about settling your disguised remuneration scheme use.

As you may know, the government recently announced a review of the disguised remuneration loan charge. We expect that some people will still want to go ahead with settling their tax affairs now. But we recognise that others may want to wait for the government's response to the review before deciding what to do.

We need to know whether you want to settle your disguised remuneration scheme use now or wait.

What you need to do now

If you want to continue to settle your tax affairs now, please let us know. Our contact details are at the top of this letter.

If you prefer to put settlement on hold, there is nothing you need to do at the moment. We'll take it to mean that you want to put settlement on hold if we do not hear from you.

d. Another example of people being treated inconsistently due to the changing dates is in relation to the response dates stated on HMRC letters. In early August 2019, the APPG received several emails from individuals who had received settlement correspondence stating a required response date later than 31st August 2019. Around the same time the APPG received an example whereby the individual was told by HMRC that they had to confirm their agreement of the settlement offer by mid August, to ensure that the process could be concluded by 31st August 2019, otherwise the Loan Charge would apply.

> With regards to an extension, if we don't have a contract settlement deed signed by both parties (yourself and HMRC) at the close of business on 31 August 2019 then you will need to pay the loan charge and declare the income on your tax return along with your other income. You should also report the additional information required by 30 September 2019.
>
> We are still dealing with a large number of settlements, are currently extremely busy and expect that to continue throughout August. If I don't have agreement to the calculations and the signed deed returned by **14 August 2019**. I cannot guarantee that we will hit that 31 August deadline.

58. **The ongoing saga of HMRC setting deadlines for both individuals and HMRC to act – with the threat of severe consequences for individuals if they fail to respond – only to then be ignored by HMRC as the date is passed is causing intense stress and anxiety.**

59. **HMRC are continuing to fail in their duty to act professionally and fairly in ongoing settlements.**

Unrealistic and unaffordable Time-To-Pay (TTP) offers

60. The original inquiry received evidence of the Time-To-Pay terms that were being offered by HMRC to taxpayers. Evidence covered monthly payment amounts and duration of the instalment plans and also the forward interest that is being applied in many cases. The original inquiry concluded that for many, the proposed Time-To-Pay (TTP) terms were unlikely to be affordable and recommended that HMRC should offer an automatic 10-year TTP for all taxpayers, without reference to income levels; and to do so at a reduced late payment interest rate. (Note: this was also accompanied by several other recommendations that would result in a reduced total liability.)

61. Since the original inquiry the Loan Charge APPG has received more examples of unaffordable TTP offers from HMRC to individuals facing the Loan Charge.

62. In June 2019 the APPG published examples of "Clearly and wholly unaffordable TTP offers" in a new document[8]. The report included two examples of TTP offers from HMRC where the

[8] Refer to Section 1 of the Loan Charge APPG report on HMRC Conduct (see Appendix C)

monthly repayment amounts exceeded the individual's entire monthly income. These are not the only examples that the APPG has seen.

63. To get an indication of the number of individuals who are being offered unaffordable TTP plans by HMRC, the APPG Survey October 2019 asked participants if HMRC had given them reasonable settlement terms based on their personal circumstances and income. The results showed that of the 1,164 respondents who had received settlement terms, 942 (91%) answered that the settlement terms were simply unaffordable:

Answer	**Count**	**Percentage**
Yes	222	19%
No - the settlement terms do not include a time to pay instalment plan	429	37%
No - monthly instalments are more than my disposable income after bills	333	29%
No - monthly instalments are more than my entire monthly income	180	15%
Sum	**1,164**	**100%**

64. Evidence that HMRC continues to offer unaffordable Time-To-Pay terms is backed up by numerous written responses submitted by respondents to the October survey. A selection of the responses containing examples of unaffordable Time-To-Pay is shown below.

a. More evidence of individuals receiving Time-To-Pay offers that exceed their monthly income:

Example 1

"I am a War Disabled veteran in semi-retirement, working part time. HMRC have given me a settlement offer of £5500 per month for 5 years, I can afford to offer them my entire monthly disability pension each month but that would take 85 years to pay off, which of course will not be accepted by them. I wrote to them in response pointing out the impossibility of paying on their terms several months ago and have had no response whatsoever, also despite my asking for a special case officer to talk to."

Example 2

"Although HMRC know I am retired, they suggested I repay over £7000 per month for 25 months when my total annual pension income is around £15,000."

b. Evidence of individuals receiving long dated Time-To-Pay offers that take them well past retirement age.

Example 3

"I am in the process of agreeing a settlement with HMRC that will see me have to pay 500 pounds a month for the next 19 years until I'm 77 years old. So the govt waited 18 years to 'enforce the law' against what I was advised to do in 1999 and I will have to spend 19 years paying this liability off."

65. Whilst is it acknowledged that HMRC are being flexible in offering longer dated instalment plans than the automatic 5 or 7 year terms, it is clearly not reasonable to expect individuals to be able to maintain payments over such a long duration and well into their retirement. The likelihood of individuals being unable to meet repayments once they reach retirement age is likely to increase.

66. In addition, it should be noted that the level of forward interest included on a TTP plan of 19 years will be in excess of 40% of the original settlement amount (which may already include backdated interest, penalties and the controversial Inheritance Tax charges) on which the instalment offer is based.

67. The APPG has also received evidence that if taxpayers are unable to accept their Time-To-Pay terms e.g. due to unaffordability, then HMRC may threaten to revoke the instalment offer and request immediate payment in full. It is clear to the APPG that if the individual cannot meet the suggested payments specified in the TTP offer, then it is highly unlikely that they will be able to pay the settlement amount in full. As a result, individuals may be forced into bankruptcy.

Example 4

"We were approached and told either agree to a settlement with an option to repay over several years or face a 90 day notice to pay in full."

68. To get an indication of the number of individuals who are facing this situation, respondents to the APPG Survey October 2019 were asked if they had experienced the scenario whereby HMRC had threatened to revoke a settlement offer because the person did not agree to their settlement terms. Of the 2,086 respondents, 586 answered 'yes'.

69. The survey researchers also reported that people are now finding that settlements they thought would prove affordable are now proving not to be so. One reason for this is structural changes in the market for contractors in anticipation of the new IR35 rules which are due to come into effect from April 2020.

70. Jim Harra, whilst serving as the Interim Chief Executive of HMRC, made the following comment to the Treasury Select Committee:

"In fact, the experience we have with people who seek time to pay, which is why we need to be slightly cautious about people having automatic access to it, is that customers tend to underestimate how long they will need to pay back their tax debts. Very often at the end of our engagement with them we end up with an instalment plan that goes over a longer period than they initially offered." [9]

71. Jim Harra here acknowledges that people are poor judges regarding how long they need to pay a large and unexpected tax bill, as they feel that they can pay larger sums each month than are actually affordable. It is then disturbing that HMRC has decided in its wisdom to give people who earn below certain thresholds – and are thus likely to be unadvised – automatic TTP agreements of 5 or 7 years duration with no check on whether they can afford the payment amounts themselves. The "slight caution" that Jim Harra says is required, appears to have been waived entirely for lower income people.

72. **The new evidence received by the APPG since April 2019 supports the findings of the original inquiry that the current settlement offers and TTP terms are simply unaffordable to many individuals.**

73. **The automatic 5 and 7 year duration payment plans will result in people agreeing to pay monthly amounts that are simply unaffordable. In some cases this will result in years of struggle to keep up with payments, including high rates of interest.**

74. **The APPG again proposes (in addition to other measures to reduce the sums demanded) HMRC should provide fairer Time-To-Pay (TTP) that terms by offering an automatic 10-year TTP for all taxpayers, without reference to income levels; and to do so at a reduced late payment interest rate.**

The conflagration of the proposed IR35 'off-payroll' rules with the Loan Charge

75. One extremely worrying development since the publication of the Loan Charge Inquiry is actually related to another separate, but related, intended Government policy. The outgoing Government made clear their intention to roll-out the so-called IR35 'off-payroll' rules (also known as the 'Off-Payroll Tax') to the private sector, after introducing them into the public sector in the Finance Bill 2017 – with effect from April 2017. They included this, despite strong opposition in the HMRC consultation, in the draft 2019 Finance Bill that had been expected to be

[9] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/hm-revenue-and-customs-annual-report-and-accounts/oral/106613.html

put before the House of Commons at the budget in November 2019. That budget will now not happen due to the dissolution of Parliament and General Election.

76. The Loan Charge APPG have been informed by a significant number of contractors already facing the Loan Charge in January – or who are making monthly payments to HMRC having signed settlement agreements – that, already, they have been told they will not be wanted by their clients from as early as December this year. So the inevitable outcome, were this policy not stopped and were it to be followed through, is that some people currently in 'Time-To-Pay' agreements to HMRC will be unable to continue paying. This would be as a direct result of this latest Government policy and would mean that some people otherwise able to pay the Loan Charge or to settle with HMRC will no longer be able to do so.

77. Considering that the original, and controversial, IR35 legislation was the reason people were recommended or required to move from self-employment through personal service companies to using loan schemes, it is deeply ironic that the latest proposed roll-out by the outgoing Government would reduce yet further the amount that might be collected through the Loan Charge and any settlement agreements.

78. The uncertainty about this new policy, and now a clear and dangerous conflagration of these two policies, will create even more financial catastrophe and mental distress for people already in a parlous situation due to the Loan Charge. It is essential that the proposed IR35 'off-payroll' roll-out is not introduced by any incoming Government. This whole and related mess must be looked at by addressing how best to tax contractors and freelance workers in the tax system.

5. HMRC conduct and their pursuit of individuals impacted by the Loan Charge

79. The original inquiry extensively covered a number of themes relating to HMRC and their pursuit of individuals who are impacted by the Loan Charge. Key themes included:

- HMRC's failure to act earlier
- HMRC's use of contractors
- HMRC's use of behavioural insights
- HMRC pursuing individuals for closed years
- HMRC issuing incorrect settlement figures
- HMRC recommendations that individuals take out loans / borrow on mortgage to settle

80. The original inquiry concluded that 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.

APPG Report on HMRC Conduct (June 2019)

81. In June 2019, the APPG published a document going into greater detail about the conduct of HMRC and their pursuit of individuals impacted by the Loan Charge. A link to the full report including detailed examples can be found in Appendix C. The report documented a number of examples covering the themes listed below.

- Clearly and wholly unaffordable Time-To-Pay (TTP) offers
- Aggressive communication
- Threats of bankruptcy
- Communications arriving at a time of maximum stress and distress
- Offering unregulated financial advice
- Unreasonable delays in HMRC's responses
- Inconsistencies in HMRC calculations between the settlement contract and the calculation appendices
- Punitive rate of interest on Time to Pay of 4.25%
- Unreasonable contractual terms for settlement

82. Since April 2019 the APPG has collected further evidence of unreasonable or incompetent behaviour by HMRC, in particular relating to Accelerated Payment Notices (APNs) and HMRC enforcement actions. The APPG has also collected statistics in the latest APPG survey conducted in October 2019, to further understand the extent to which individuals are experiencing issues when interacting with HMRC.

APPG Survey Results on HMRC behaviour (October 2019)

83. Respondents to the APPG survey conducted in October 2019 were asked to confirm which scenarios they had experienced from their interactions with HMRC. The results clearly show that delays and communication issues were the scenarios that are most frequently reported, with more than 1,000 individuals confirming that they had experienced these issues. The full set of results is shown in the table below.

Have you experienced any of the following scenarios from HMRC? (Please tick all that apply)	**Percentage**	**Count**
Delays of longer than 30 days in responding to my correspondence or queries.	61%	1,265
Delays of longer than 30 days in providing settlement figures.	53%	1,097
Lack of communication (e.g. not responding at all, ignoring your queries, insufficient information provided on correspondence)	53%	1,096
Providing inaccurate figures or calculations.	40%	829
Letters are arriving late or are backdated.	37%	766
Received threatening letters stating or implying criminal behaviour.	32%	676
Threatened to charge more interest if I do not sign the settlement agreement.	32%	660
Disorganised (e.g. losing paperwork, asking for the same info several times, etc.)	31%	647
Threatened to revoke the settlement offer if I do not agree to their terms.	28%	586
Threatened to charge tax on monies that I did not receive for example on fees deducted by the promoter.	23%	483
Stated that I need to try to take out loans, borrow on credit cards, or borrow against the house in order to settle.	23%	482
Offered misleading or inaccurate advice.	23%	476
Suggested that I sell the house or other assets in order to settle.	16%	341
Delays of longer than 30 days in confirming and accepting signed settlement agreements.	14%	286
Asked me to approach friends/family to borrow money in order to settle.	12%	247
Ignored that I am designated as "vulnerable" and that HMRC need to take additional care in contacting me.	9%	191
(Did not tick any of the listed scenarios)	11%	220
	Participants	**2,086**

84. The survey researchers report that the participants overwhelmingly felt that HMRC are not treating them fairly or professionally. They liken the tactics employed to being similar to the Mafia, with pressure applied relentlessly on taxpayers to comply with unreasonable demands and threats made of repercussions if people do not take actions such as borrowing against the value of their home or borrowing from friends and family to pay HMRC's required settlement.

85. **HMRC's conduct during the process of settlements has continued to be very poor. It has fallen well short of the professionalism that should be expected of an organisation which can have such a huge impact on people's lives.**

Accelerated Payment Notices (APNs)

86. The original APPG inquiry looked at the background to Accelerated Payment Notices (APNs), with the APN legislation having been implemented in 2014 and the first APNs issued in 2015.

87. APNs allow HMRC to collect payment of a disputed tax liability upfront and in advance of a formal ruling by a Court or Tax Tribunal. APNs can only be issued if certain criteria are met. For example, an APN can only be issued if the arrangement is DOTAS (Disclosure of Tax Avoidance Schemes) registered. HMRC must also open a valid enquiry or discovery assessment within the timeframe specified in the Taxes Management Act 1970. The taxpayer has no right to appeal an APN, other than to make a representation to HMRC which HMRC routinely deny. Mounting a Judicial Review of HMRC's decision is generally beyond the means of a taxpayer. APN's must be paid within 90 days of receipt to avoid late payment penalty charges being applied.

88. The APPG is aware that the issue of APNs is a completely separate process to the Loan Charge, and that APNs already existed as a tool to collect payment of an alleged tax liability prior to the resolution of the dispute. This power existed before the Loan Charge was first mentioned in 2016. However, APNs are relevant because the same tax years that are subject to APNs are also subject to the Loan Charge if the dispute has not been settled.

89. The APPG is concerned that HMRC is stepping up their enforcement of APN payments in a situation where the taxpayer's right to take a dispute to a Tax Tribunal has already been effectively removed by the Loan Charge legislation. The main purpose of an APN is for HMRC to collect the tax upfront and hold it as a payment on account until the matter is settled – by a judicial process if necessary. Under normal circumstances, if the Loan Charge legislation was not enacted, then a tribunal or court ruling in favour of the taxpayer would require the APN to be refunded to the taxpayer. Or, a judicial ruling in favour of HMRC would mean the APN would be used to offset the adjudicated tax liability. As the Loan Charge has effectively removed the

taxpayer's right to a Tax Tribunal or Court ruling, it is not fair that HMRC continue to pursue individuals for the enforcement of APN payments and penalties.

90. The APPG also believes that there is no need for HMRC to enforce payment of APNs, as HMRC can already collect the money either through the settlement process or through the Loan Charge. The main benefit to HMRC of issuing new APNs at this point in the timeline, is that HMRC can charge additional late payment penalties and surcharges on APNs that are not paid by the specified due dates, thereby increasing the revenue that it collects over and above the tax liability that may be due. As APNs do not finalise or close the enquiry into the tax year, the APPG believes it is irresponsible of HMRC to pursue enforcement of APNs at a time when individuals are already in the settlement process. The settlement process is a way to bring closure the tax dispute. The APN process brings no closure, only suffering for people who cannot afford to pay.

91. Another reason suggested to the APPG for HMRC's increased focus on APNs is that this provides an avenue to apply additional pressure on individuals even whilst the Loan Charge is under review by the Government. HMRC have said that individuals can choose to settle whilst the review is ongoing, and that they will not penalise people for choosing to wait. However, this message appears not to have got through to HMRC's Debt Management department who are continuing their relentless pursuit of APNs. Some people may feel that they have to settle before the review concludes in order to avoid severe consequences.

92. **HMRC's continued pursuit of APNs during the Loan Charge Review and whilst individuals are seeking settlement is entirely unjustified and appears to be another method of HMRC applying maximum pressure on people to yield to their demands without allowing a judicial process.**

HMRC enforcement action against individuals facing the Loan Charge

93. Since April 2019, the APPG has been contacted by a number of individuals and business owners who are being pursued by HMRC's Debt Management department for enforcement of APNs or other payments.

94. In June 2019, the APPG published a document on HMRC conduct that documented three examples of enforcement action by HMRC relating to APNs:

- HMRC's Debt Management (DM) department wrote to an individual over claimed APN debts saying that they would take action via County Court if settlement with HMRC's Counter Avoidance department (CA) was not reached. DM subsequently acknowledged that they should not have written to the individual as they were still in discussion regarding settlement[10].

- An individual was sent a warning of bankruptcy letter from HMRC's Debt Management department giving the individual 11 days to respond or face bankruptcy proceedings[11].

- An individual was trying to negotiate a TTP arrangement with HMRC for payment of an APN. The correspondence from HMRC includes a threat that the TTP arrangement would be cancelled and HMRC's debt management team would "pursue the full debt via various methods" in the event of a missed payment[12].

95. The APPG survey conducted in October 2019 asked respondents to confirm if they had experienced any enforcement action related to their Loan Charge situation, including APNs. The results showed that 37% of respondents had experienced at least one type of enforcement action and that almost half of those had experienced enforcement action since 5th April 2019. A breakdown of the types of enforcement action experienced by those who had experienced enforcement action is shown below.

Enforcement action	**Percentage**
I have had phone calls from Debt Management demanding payment	7%
I have had letters demanding immediate payment	17%
I have had letters threatening court action if payment is not made	12%
I have had letters threatening legal action or bailiffs if payment is not made	8%
I have had visits to my home/office by bailiffs or HMRC officers	4%
I have experienced other enforcement action	7%

96. Respondents to the survey also detailed the impact that HMRC's enforcement actions was having on their welfare:

> *"Impossible to talk to, unreasonable and totally impractical. Not interested in my health and well-being in the slightest. Threats of bailiffs have really frightened me so that I have had to agree to a time to pay on APNs which with my other outgoings is more than my pension income. My wife is disabled and I am her full time carer. When the rest of my savings had gone I fear for our future"*

> *"HMRC have offered me a 7 year TTP for about £600/ month if I make a large upfront payment of 30-40k, they have not asked about my personal circumstances and whether I can afford the repayments. So they haven't taken into account if I can make good on the repayments. But if I cannot, I will then be redirected to DMB and they will take my house and everything in it."*

[10] HMRC Conduct Report page 10 example 8 (see Appendix C)

[11] HMRC Conduct Report page 11 example 9 (see Appendix C)

[12] HMRC Conduct Report page 6 example 4 (see Appendix C)

"Despite my completing and sending back the settlement pack by their deadline, I've heard nothing from HMRC in relation to an offer or TTP. No correspondence since. However, even though I'm waiting on THEM to get back to me on Loan Charge settlement, and even though the review is in progress.... they have ramped up demands to pay APNs (letters and calls). I responded to a threatening APN letter via email, but they have also not replied to that either. HMRC bombard us with demands, threats and deadlines but fail to respond when we go back to them. It increases the anxiety and gives no certainty surrounding what will happen next."

"I have applied to The HM Tribunal to have this case heard. HMRC are blackmailing me into dropping the case and accepting the loan settlement, or else they will increase the Loan Charge yet again. I will not be blackmailed by anyone, especially not a Civil Servant and my case will be heard in court."

97. **The Debt Management department of HMRC are being used to apply pressure on individuals to give up any legitimate disputes and to agree settlements, in some cases on terms that are simply unaffordable.**

6. Suicide risk and known suicides of people facing the Loan Charge

98. The original inquiry reported that "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."[13]

99. The original inquiry reported that up to March 2019, three suicide cases had been reported to the Loan Charge APPG. A whistle-blower working for HMRC informed the APPG that HMRC were aware of at least six suicides of people facing the Loan Charge. The report also stated that HMRC had referred itself to the Independent Office for Police Conduct (IOPC) over one suicide case.

100. The original inquiry concluded that there was a clear and serious risk of further suicides if the Loan Charge was not delayed.

101. Unfortunately the findings of the original inquiry have proven to be correct. Since April 2019 there have been four further Loan Charge related suicides notified to the APPG. Some of these suicides are known to have occurred after the publication of the APPG's report. Recent evidence received by the APPG suggests that the risk of further suicides remains high. The due date for payment of the Loan Charge on 31st January 2020 is approaching fast and the APPG is aware that the risk of further suicides is likely to increase significantly between now and January if there is no change in the policy.

Additional suicide cases reported since April 2019

102. **The APPG has been sent evidence (by families directly or via their professional advisers) of four further suicide cases since 5th April 2019,** bringing the total number of known cases to seven**.** Two of the four cases reported after 5th April 2019 were notified by tax advisers to the APPG. The other two cases were reported to the APPG by family members of those who died.

103. In **July 2019** the **fourth suicide case** was reported to the Loan Charge APPG by a tax adviser. The tax adviser reported that his client had committed suicide in December 2018. The adviser also reported at that time that the business partner of the deceased client was now also considered 'at risk' due to the persistent ongoing nature of HMRC's demands regarding settlement of the Loan Charge. The business partner is still regarded as 'at risk'.

[13] Refer to the Loan Charge Inquiry Report (see Appendix A), page 63, no. 235

104. Also in **July 2019** the **fifth suicide** case was reported to the Loan Charge APPG by another tax adviser. The son of the deceased had reported the death to the tax adviser, who was greatly distressed having been in regular contact with the man in the days leading up to his death. The report from the tax adviser states that according to the family, the comments made by Jesse Norman, Financial Secretary to the Treasury at Treasury Questions may have been the "final straw" which lead them to take their life.

105. The **sixth suicide case** was reported to the Loan Charge APPG in **August 2019** by the widow of the deceased man, Mr Angus McLaughlin, a radiographer. Mr McLaughlin took his own life in March 2019. His widow had already been publicly interviewed about this matter by newspapers including the Mirror after receiving a large tax demand from HMRC for the amount of £94,000. Mrs McLaughlin considers HMRC's continual hounding to be responsible for her husband's downward spiral of despair.

106. In September 2019 the Loan Charge APPG was notified of the **seventh suicide case** by the brother of a man who was facing the Loan Charge. The APPG had previously been notified that the individual had admitted himself to a psychiatric unit due to severe anxiety and depression caused by the Loan Charge. In an impact statement provided to the APPG, the brother of the man wrote:

> *"I first became of aware of the Loan Charge when my brothers mental health went in to terminal decline in the middle of July. I had just returned from a family holiday abroad and received a call from my father "your brother isn't in a good way, he's suffering from severe depression and anxiety". I dropped everything a rushed to my brother's house to be confronted by someone in complete terror. My brother was extremely agitated and was suffering from suicidal thoughts, he hadn't slept properly for two weeks and had lost weight due to his lack of appetite.*
>
> *I began to speak with my brother to try and make sense of what was going on and how I could help him. He immediately opened up to me describing how he was going to lose everything as a result of the Loan Charge.*
>
> *He was caught up in a vicious circle of catastrophising. He believed he was going to lose everything that he had built - his house, his ability to work, his relationship with his partner and his way of life. Most terrifying of all he feared that he would no longer be able to provide for his two teenage kids.*
>
> *I spent the night at my brother's house and for the first time in 30 something years I slept in the same bed as him, I just cuddled him and tried to comfort him but it didn't help. The next morning at around 5am we both got out of bed and I said to him I would take him for a drive in my car to try and distract him. We drove for about 2 hours, just talking, he kept repeating "I'm not well, I'm not well, help me, help me". That was day one of my experience trying to help my brother."*

At the time, the man was admitted to a psychiatric hospital and spent three weeks receiving treatment for severe anxiety and depression. Tragically, in September 2019, the APPG were informed by his brother that the individual had committed suicide.

107. The APPG has also been made aware of at two additional suicide cases that people have linked to the Loan Charge and HMRC's pursuit of related APNs. However, these reports cannot be verified at this time having been made by people who are not close to the people who died and have so far been unable to provide additional details.

108. The APPG is aware that since April 2019, HMRC has referred itself to the Independent Office for Police Conduct (IOPC) over three further suicides bringing the total number of cases reported by HMRC to the IOPC to four.

109. The APPG is not if any of the four suicides reported by HMRC are the same cases that would have been independently reported to the APPG.

110. It is notable that Penny Ciniewicz, HMRC Director General of Customer Compliance, stated in oral evidence to the Treasury Select Committee in October 2019 that HMRC had reported nine cases of suicide relating to any matter, not just the Loan Charge, in the previous 12 months.[14] It would appear that nearly half of all HMRC referrals to the IoPC in cases of suicide relate to the Loan Charge. It seems unlikely that half of all tax investigations conducted by HMRC relate to the Loan Charge. It can be concluded that the risk of suicide by those facing the Loan Charge is significantly higher than for the general population of people under HMRC investigation.

111. **The APPG can assert that the additional suicide cases further reinforce the original conclusion of the Loan Charge Inquiry April 2019. The link between cases of suicide reported to the APPG and the Loan Charge is clear and irrefutable.**

The ongoing suicide risk associated with the Loan Charge

112. The results gathered from the latest APPG survey[15] conducted in October 2019 show the level of suicide risk remains just as high as was found earlier in the year in the previous survey[16]. The original inquiry found that there was a clear and serious risk of suicide if the Loan Charge was not delayed.

[14] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/hm-revenue-and-customs-annual-report-and-accounts/oral/106613.html

[15] Refer to the APPG Survey October 2019 results (see Appendix D)

[16] Refer to the APPG Survey March 2019 results (see Appendix B)

113. Question 16 of the October survey asked respondents if their mental, emotional, physical or social wellbeing was being impacted, as a result of the Loan Charge. The results from the October survey showed a similar pattern to the results from March, with impact to emotional wellbeing clearly showing as the biggest symptom.

Emotional wellbeing: 92% in October 2019 compared to 96% in March 2019

Mental wellbeing: 84% in October 2019 compared to 89% in March 2019

Social wellbeing: 76% in October 2019 compared to 81% in March 2019

Physical wellbeing: 52% in October 2019 compared to 55% in March 2019

114. Question 17 of the October survey showed that 93% of respondents answered 'Yes', when asked if they had experienced periods when they felt panicky, anxious or unable to cope since learning about the Loan Charge, compared to 95% in March 2019.

115. Question 19 of the October survey showed that 39% of respondents answered 'Yes', when asked if they had thought about suicide since learning about the Loan Charge, compared to 40% in March 2019.

116. The October survey delved further than the March survey, seeking to quantify the level of stress being faced by individuals. Question 18 asked respondents if they had visited a medical practitioner to seek counselling or medication. 679 (33%) of the survey participants answered 'yes'. Whilst the APPG is pleased that some individuals are seeking medical help if they need it, the high number of people who are in this situation is of great concern.

117. The October survey gave respondents the opportunity to submit any other information that they wanted to bring to the attention of the APPG. The APPG received numerous replies that evidence the ongoing distress of taxpayers facing the Loan Charge. A selection of examples are shown below:

Example 1

"I have suffered and still do suffer from severe feelings of depression, anxiety and insomnia which has been so bad that I've been hospitalised and off work several times over extended periods. I have told HMRC that I have daily thoughts of suicide and even with an extended TTP I feel like life won't be worth living. I would need a 30 year TTP and it would also mean sacrificing the possibility of ever having kids."

Example 2

"I feel guilty since the person who recommended the scheme in 2004 and also participated in it, took their own life over all this in 2016 following a visit by debt collectors on behalf of

HMRC. It is a daily issue and causes me stress and upset, and a feeling of helplessness when those making statements in government lie."

Example 3

"I was admitted to hospital in February 2019 after receiving a demand for £156,000 with severe hypertension and blood pressure of 200/115. My GP has prescribed medication for high blood pressure. I now suffer from panic attacks and severe back pain that my GP thinks is linked to stress. I have had 58 years of exceptional health with absolutely no time off in a working life of 43 years. Now since the Loan Charge I have these severe symptoms and my health has been ruined."

Example 4

"I've had enough. It's not if it's when. The only thing stopping me is making sure all those I have reached out to know they should of done something. My suicide WILL BE Loan Charge related…

I had to fill in a questionnaire with a Mental Health Counsellor just a few weeks ago. 1. Are you a danger to yourself - Yes 2. Are you a danger to others - Yes She pointed out this information, if she deemed it necessary could lead to me being sectioned. It's just a hopeless, hopeless terminal situation and it's busting me that it will damage my children and [I will] never see my grand children."

118. **The APPG's survey shows clearly the emotional distress being suffered by those facing the Loan Charge and demonstrates the reasons that this is likely to lead to suicides.**

Inadequate service by HMRC to taxpayers who are 'at risk'

119. The original inquiry urged HMRC to set up a 24-hour counselling helpline for those facing the Loan Charge. The findings suggested that HMRC may be negligent in their failure to provide this support, knowing the clear suicide risk of people facing the Loan Charge.

120. To date, no helpline has been set up by HMRC. HMRC and Ministers refer to a dedicated phone number for disguised renumeration but in reality, as they themselves make clear, this phoneline is only to answer questions about settlement, not to assist suicidal people.

121. A letter sent to Stephen Lloyd MP by the Leader of the House, Rt. Hon. Jacob Rees-Mogg MP, and shared on Twitter states:

"It would be inappropriate for HMRC, as a tax authority, to set up a helpline for those in severe mental distress. However, the call handlers are trained to help customers seek more specialised help in appropriate cases from organisations like the Samaritans or Mind."

122. In June 2019 the Loan Charge APPG met with volunteers from the Loan Charge Action Group (LCAG) helpline. Individuals in distress can text 'LCAG Help' to 81025 and a volunteer from the helpline team will call them back.

123. A volunteer from the LCAG helpline informed the APPG that as at 31st October 2019 the helpline had received a total of 139 distress calls, made either directly by 'at risk' individuals or referrals where a person contacted the helpline to request support for an 'at risk' individual. It is worrying that the helpline has seen an increase in the number of calls since August 2019.

Month	Number of distress calls received
Sep-18	7
Oct-18	6
Nov-18	7
Dec-18	1
Jan-19	11
Feb-19	27
Mar-19	23
Apr-19	17
May-19	7
Jun-19	6
Jul-19	12
Aug-19	30
Sep-19	20
Oct-19	19
Total	**193**

124. The volunteer from the LCAG helpline also confirmed that they are currently monitoring fifteen 'at risk' individuals, three of whom are monitored on a daily basis.

125. **The APPG is extremely concerned at the reports from the Loan Charge Action Group helpline which reinforce the need for HMRC to urgently set up a 24 hour helpline (not related to payment of bills, but a mental health telephone service) staffed by trained counsellors, as recommended by the original inquiry.**

Inadequate service by HMRC to families of suicide victims

126. Since the original inquiry the Loan Charge APPG has received new evidence that the service provided by HMRC to the families of people who died whilst facing the Loan Charge, including cases of suicide, is totally inadequate. Those left to deal with the affairs of the deceased are facing long delays and periods of silence from HMRC, during a period that is already stressful for the families in question. The further suffering this causes is unnecessary and cruel.

127. In October 2019 one of the daughters of a person who committed suicide whilst facing the Loan Charge submitted a further impact statement to the APPG. The daughter previously gave

evidence to the APPG in person regarding her father's suicide. The statement described the delays in receiving settlement figures from HMRC and the impact this was having on her personal wellbeing. They wrote:

> *"…we agreed that we would resolve his Loan Charge case no matter what, even if we paid the money, it's what he had wanted to do. At the time we thought it was achievable, dad had already submitted what HMRC required and they would simply respond to us rather than dad with the voluntary amount they wanted. We just wanted closure, to do it for dad.*
>
> *As we approach the one year anniversary of his suicide we have no figures, we have nothing, we wait. Our agent had made them aware of the circumstances around his death on several occasions but months and months later HMRC clearly don't feel they should respond at all. I just don't understand why HMRC wouldn't want to be responsive at what is such a difficult time for our family.*
>
> *The waiting is probably the worst thing for me, it just feels like we will never get any answers or closure, it's like they want to torture us mentally by saying nothing…*
>
> *I wish HMRC knew just how their inaction affects me everyday. Would they look at our case? Would they just give an answer? I fear the answer to both would be no.*
>
> *Up until last month I was working full time, raising my four children, running my home. I have always been proud that I could spin all the plates and keep smiling.*
>
> *Today I am a very different person, I feel the lowest I have felt in my entire life. I've walked out on a good job because of my mental health, my focus had gone and I just cried constantly. Having a panic attack was the last straw, I just had to leave.*
>
> *My children no longer have a mum that is on top of everything, they have a mum who they walk on eggshells around me and they're now the ones who check that I've got food in for dinner, that I've eaten and whether I've remembered to wash their uniform. Such simple things that I as a mum always had a handle on over the past 17 years."*

128. With regard to the sixth suicide case of Angus McLaughlin, HMRC appear to have been less than sympathetic on learning of his death. His widow reported that HMRC asked that she complete her husband's tax return as quickly as possible.

129. **A delay of a year in resolving the tax affairs of someone who died, with the full cooperation of the bereaved family, is wholly unacceptable. HMRC should give consideration towards a streamlined resolution process that emphasises speed over collecting the maximum possible revenues.**

130. **The APPG recommends that a specialist bereavement unit must be put in place to deal with such cases as those detailed above. This unit must be staffed by qualified, trained individuals who are knowledgeable in grief counselling and able to provide the professional support that such circumstances demand.**

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

131. The evidence reported in the sections above and received by the Loan Charge APPG since April 2019 shows that the suicide risk amongst people facing the Loan Charge has increased since the legislation came into effect. This is supported by the statistics purveyed from the APPG survey of October 2019.

132. On 25th September 2019 the Loan Charge APPG wrote an open letter[17] to the Chancellor of the Exchequer, the Rt. Hon. Sajid Javid. The letter called for the Chancellor to announce a complete suspension of the Loan Charge, of settlement activity and of enforcement of APNs including penalties and interest, while the independent Loan Charge Review run by Sir Amyas Morse is taking place. The letter raises the serious risk of suicide as a key reason for the required suspension.

133. The calling of the General Election makes it impossible for the current Parliament to discuss the recommendations of the Loan Charge Review when it is submitted to the Chancellor in mid-November, and for a Government to reasonably implement its recommendations in time with the Loan Charge falling due for payment by 31st January 2020.

134. **The APPG recommends an immediate suspension of the Loan Charge, all related settlement activity and payment plans, including APNs, until the Loan Charge Review report has been read, analysed and debated by the next Parliament.**

[17] source: http://www.loanchargeappg.co.uk/wp-content/uploads/2019/10/Open-letter-to-Chancellor-re-Loan-Charge-Suspension-25-September-2019.pdf

7. Other impacts to individuals facing the Loan Charge

135. This section considers the financial risk and the risk to family stability, for individuals facing the Loan Charge. These topics were already covered in detail as part of the original inquiry therefore this section will look at how the situation has changed since April 2019.

Results from the APPG Survey October 2019

136. Full results in Appendix D.

Insolvency and bankruptcy risk

137. The original inquiry assessed the risk of insolvency and bankruptcy to individuals facing the Loan Charge. It concluded that there will be a significant number of people likely to go bankrupt and that many individuals will face financial hardship due to the Loan Charge. This is despite HMRC continually telling MPs and peers that they "don't want" anyone to go bankrupt or have to sell their homes (notably, not saying that people will not go bankrupt or have not other choice but to sell their family home).

138. Respondents to the APPG survey conducted in October 2019 were asked "are you in danger of going bankrupt due to the Loan Charge, settlement offer or APNs?" The results show that the risk of bankruptcy remains high with more than 75% of respondents answering 'yes' or 'uncertain' to this question.

139. Six respondents of the survey confirmed that they had already been made bankrupt. Two of the six bankruptcies have occurred since 5th April 2019. As the number of respondents to the survey (2,086) is only a fraction of the total number of individuals impacted by the Loan Charge (50,000 according to HMRC), the APPG expects the actual number of bankruptcies to date to be higher.

140. Based on the statistics collected in both the March and October surveys, the APPG concludes that it is likely that the number of actual bankruptcies will increase significantly when the Loan Charge falls due for payment by 31st January 2020.

Loss of the main family home

141. The original inquiry reported that many individuals are faced with losing their home as a result of the Loan Charge.

142. Respondents to the APPG survey conducted in October 2019 were asked "do you believe you are in danger of losing your main home due to the Loan Charge or APNs?" More than 75% of respondents answered 'yes' or 'uncertain' to this question. The APPG is clear that there is a high risk that families may lose their homes as a result of the Loan Charge.

143. The results of the October survey show that to date at least 65 individuals or families have already sold their homes, and that 17 of those house sales have occurred 5th since April 2019. As the number of respondents to the survey (2,086) is only a fraction of the total number of individuals impacted by the Loan Charge (50,000 according to HMRC), the APPG expects the actual number of people who have already sold their main home to be much higher. The APPG also expects that the number of families who will need to sell their main home will increase as settlements progress or as the Loan Charge falls payable by 31st January 2020.

144. HMRC have continued to say that they will not force anyone to sell their main home, but the APPG's survey found that 23% of participants had been told that HMRC expected them to borrow on credit cards or against the value of their home in order to settle. Forcing people to stretch their credit in such a manner without properly assessing their financial situation (which may change during the course of a very long time-to-pay agreement) is likely to put them at greater risk of failing to maintain mortgage payments. The risk of losing their home, regardless of HMRC's reassurances will be higher.

145. **HMRC's reassurances towards taxpayers regarding their homes are carefully and cynically worded to give the impression that there will be few people having to go bankrupt and sell their homes, when this is simply not the case and HMRC are aware of this fact. Of those facing the Loan Charge, a very high proportion will be unable to pay the sums demanded – even over a long timescale – and in some cases, due to the large amount being demanded, would be better off declaring bankruptcy than paying a scarcely affordable or unaffordable sum to HMRC for many years. It is clear, as the original Loan Charge Inquiry concluded, that there will be significant numbers of people having to sell homes and going bankrupt.**

Breakdown of family relationships

146. The original inquiry reported that families have already broken up due to the pressure from the Loan Charge and that many more families faced breakdown. This was despite the impact assessment by HMRC claiming there would be no effect on family stability.

147. Respondents to the APPG survey conducted in October 2019 were asked to confirm if they feared that their family relationships (immediately or extended) were breaking down. The results

of the October survey showed broadly similar results to March, with 64% answering ‘yes’ in October compared to 68.1% in March.

148. Sadly, the October survey showed that 160 families (8% of those who participated) had already suffered breakdown. A quarter of those having occurred since the March survey.

149. **It is apparent that families of the tens of thousands impacted by the Loan Charge are being greatly affected by the Loan Charge and that many more will breakdown as the full force of the legislation comes in the near future. The impact assessment by HMRC of the Loan Charge was negligent with regard to this issue.**

8. Effectiveness of the Loan Charge as a policy to prevent tax avoidance

150. The original APPG inquiry looked the circumstances leading to the introduction and increasing use of loan based arrangements. Topics included the background of the IR35 legislation, the rise of loan based arrangements, the role of advisers/intermediaries and the conduct of promoters.

151. This section considers if the Loan Charge has been an effective policy of stop the use of loan based arrangements, which is what HMRC intended it to.

Treasury Committee Hearing 30th January 2019

152. At the oral hearing of the Treasury Committee on 30th January 2019, Mary Aiston, Director Counter Avoidance, was asked by committee member Colin Clark,

> *"Is the Loan Charge meant to be another tool in your toolbox to incentivise people to conclude that their schemes do not work, and to help you close some of the large backlog of cases? Is this a way of dealing with tens of thousands of outstanding cases?"* [18]

She replied,

> *"**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. Is it a prompt to settle? I hope so. What the Loan Charge does is give taxpayers three choices, effectively: they can repay the loans that they took out; they can settle the tax due; or, if they do not want to do those two things, then they can pay the Loan Charge on balances that are outstanding in April**. It is our hope that lots of people will take this as a prompt and an opportunity to come in and settle and get out of their disguised remuneration once and for all.**"*

153. Importantly, Mary Aiston did not say that HMRC could have closed the backlog of cases through its proper channels, using the tribunals process and allowing the due process of law to run its course, within the defined time limits. This would also have ensured that taxpayers pay the correct amount of tax, whilst maintaining taxpayer protections and without reference to the subjective notion of "fair share".

[18] Source: see Q32 of document http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/tax-enquiries-and-resolution-of-tax-disputes/oral/96049.html

Success in combating the use of loan arrangements

Individuals

154. The Loan Charge did not exist prior to March 2016. It was announced in the 2016 Budget.

155. It is clear that for those who had already ceased using any loan-based arrangements prior to March 2016, the introduction of the Loan Charge provided no incentive to stop using the arrangements, as they had already stopped.

156. From March 2016 onwards, the announcement of the Loan Charge could have stopped people from entering into or continuing to use loan-based arrangements. However, the low key introduction of the Loan Charge, which did not receive Royal Assent until November 2017, and the inadequate communication from HMRC meant that many taxpayers were not informed about the Loan Charge until 2018 or 2019. The APPG Survey October 2019 showed that in some cases taxpayers have never been notified about the Loan Charge.

157. The APPG believes that the Loan Charge is likely to be successful in discouraging those individuals who ARE aware and facing the Loan Charge from using tax planning arrangements in future. However, the Loan Charge in isolation is unlikely to discourage ALL taxpayers from using tax planning arrangements that the Government regards to be ‘aggressive tax avoidance’ – this being a subjective term and not defined in law.

158. There is evidence to show that similar tax planning arrangements are still being promoted today. Those who are not aware of the Loan Charge and the Government’s more recent stance on the use of tax planning arrangements, may unwittingly sign up to use these arrangements, and then find themselves with a large retrospective tax demand in the future. Indeed, the APPG are aware that public sector workers who have been impacted by the IR35 reforms may have been particular targets for promoters since 2017 and that workers in the private sector facing the 2020 IR35 reforms may be the next significant market that the promoters will target.

159. **The Loan Charge has done little to reduce the propensity of individuals in general to enter into arrangements that HMRC may challenge in future years.**

Promoters

160. As mentioned above, there is evidence that tax planning arrangements deemed to be ‘aggressive tax avoidance’ by the Government have continued to be marketed even after the

announcement of the Loan Charge in 2016. In fact, the APPG has received evidence of tax planning arrangements that are still being openly marketed today.

161. Companies such as Smartpay, which is a loan-based arrangement that was widely used within the public sector, were continuing to actively recruit during 2017.

162. The APPG has received evidence of companies promoting arrangements which claim to circumvent the Loan Charge - by repaying loans - but effectively are replacing one loan arrangement for another. Appendix F contains documented examples of the arrangements. Examples of arrangements include:

- repaying the loan for that day, and re-borrowing the following day
- loans being bought out for a lower amount
- loans being transferred to other parties
- loans being capitalised

It is possible that these arrangements will eventually be challenged by HMRC, but for now it would appear that the Loan Charge is being circumvented by the original promoters, or by new companies set up for that purpose. The arrangements above will involve fees being paid by those facing the Loan Charge in the hope of extracting themselves from their predicament.

163. The APPG has also received evidence of promoters who are continuing to market 'tax efficient' arrangements. It is not clear if the arrangements are loan-based, however they are marketed as 'tax efficient' and 'compliant' tax solutions. It is possible that a future Government will deem these to be aggressive tax avoidance schemes in future. Examples are available in Appendix F.

164. We reiterate here that the APPG believes that all taxpayers should pay tax as required by the law and that aggressive tax avoidance should be strongly challenged by the government under the law. Any identified deficiencies in the law should be closed as swiftly as possible on a prospective basis.

165. **The Loan Charge has not prevented tax planning arrangements from being openly promoted.**

Impact of the IR35 private sector reforms April 2020 on the use of tax planning arrangements

166. On 6th April 2020 the off-payroll (IR35) working rules will change for the private sector and will be applied differently to the way in which the rules are applied today. From this date, all

medium and large sized clients will be responsible for deciding the employment status of contractors[19]. Currently this decision lies with the contractor. This change in the responsibility for determining status has already applied in the public sector since April 2017.

167. In layman's terms, this means that contractors who are currently contracting through their own Limited Company, also referred to as a Personal Service Company, will no longer be able to determine their own IR35 status. The responsibility will fall to the 'engager' of their services.

168. The original inquiry found that IR35 compliance was a key reason for many individuals to use loan-based arrangements. The IR35 private sector reforms will impact a much larger population of contractors than the number who are currently facing and aware of the Loan Charge.

169. Contractors in the banking sector are already seeing the impact of the proposed reforms as a number of banks have announced that they will not use the services of any Personal Services Companies in the future. Their new policies will require contractors to work under other prescribed arrangements which avoid the need for the banks to assess IR35 status.

170. In the public sector, there is significant evidence of engagers blanket-assessing contractors as inside IR35 without regard to individual circumstances.

171. **The APPG is very concerned that the IR35 reforms may push contractors into the hands of umbrella companies who continue to market 'HMRC compliant' tax efficient solutions.**

Has the Loan Charge met its objective?

172. The evidence gathered by the APPG clearly shows that the introduction of the Loan Charge has not stopped people using similar arrangements. The Loan Charge did not impact promoters and thus offered little incentive for them to cease marketing and taking on new subscribers. As such, the Loan Charge has failed in its key objective of taking people out of loan-based or other tax planning arrangements. The IR35 private reforms are, at the same time, providing a fresh market for the promoters of such arrangements.

[19] Source: https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-clients

9. Misinformation and obfuscation by HMRC and HM Treasury

173. The original report described various instances of Treasury Ministers and HMRC providing misleading answers and misrepresenting facts to defend the Loan Charge policy. This has continued in the period since.

Percentage of Revenue from Employers

174. The APPG published a separate document in November 2019 analysing the split of revenue expected from, and actually collected from, “employers” and “individuals”.[20] The findings of this report are discussed here.

175. From the published information, it is simply not possible to determine the allocation of the estimated revenue yield between settlements and the Loan Charge. This reflects a lack of information from HMRC and a reticence of both HMRC and Ministers to provide such information when questioned.

176. The significant majority of the £3.2 billion expected yield figure is not due to the Loan Charge, but as a result of the Glasgow Rangers Supreme Court case decision and the wider Disguised Remuneration project. It is not correct for Ministers to say that the Loan Charge is necessary to collect billions of pounds in revenue.

177. There has been consistent and deliberate conflation of the Loan Charge and the wider Disguised Remuneration Project - along with a misrepresentation of the result of the Rangers Supreme court decision. Ministers and HMRC claim that the Rangers Supreme court decision gives the justification for the Loan Charge. This simply is not true as this ruling relates to the tax due from employers, and not employees. Any tax due as a result of the Rangers decision is separate from, and does not require, the Loan Charge.

178. Those who engaged individual contractors using loan schemes (end clients, agencies, umbrella companies and promoters) are not liable to the Loan Charge and so are not paying anything.

179. The “employers” quoted by HMRC as paying a large share of the money to be obtained are not employers of contractors. Rather, they are owner-managed small and medium businesses in

[20] See Appendix E for a link to the full report

the UK which implemented trust structures. The bill will land with the owners of these SME's. They are not the umbrella companies who employed contractors and provided their services to UK based clients.

180. HMRC and the Treasury have given the false impression that the Loan Charge falls mainly on large firms and others who engaged contractors, when this is the opposite of the reality. Contractors who worked for umbrella companies are being told to pay the full Loan Charge, or to settle the full amount that HMRC say is due. The end engagers of the contractors' services are not being told to pay anything. Some of these engagers were large private sector corporations or public sector organisations including NHS trusts, local authorities and even government departments such as HMRC. They are not facing tax demands from HMRC.

181. The majority of money predicted to come directly from the Loan Charge will come from individual contractors and small business owners as detailed above.

182. An employer has a duty to reclaim any tax paid from the employee, so **the individual will pay regardless**. In the very rare instance that an UK-based umbrella company or a large employer who previously used loans to remunerate their employees is still trading and is liquid, having had three years to take action to put themselves out of the firing line, any tax that the employer pays on behalf of a current, or former, employee must still be reclaimed by the employer from the employee.

183. To summarise, this document clearly shows that there has been consistent and deliberate conflation of the Loan Charge and the wider Disguised Remuneration Project - along with a misrepresentation of the result of the Rangers Supreme court decision.

184. It also shows that HMRC and the Treasury have given the false impression that the Loan Charge falls mainly on large firms and others who engaged contractors, when this is the opposite of the reality.

185. **The campaign of misinformation and obfuscation by HMRC and the Treasury has continued, with no variation to this occurring as a result of the change of Ministers. We continue to believe that at times this breaches the Civil Service Code and the Ministerial Code and believe that there should be a proper, fuller independent investigation into the whole Loan Charge scandal that specifically includes investigating these misrepresentations.**

Statements made by Jesse Norman, Financial Secretary to the Treasury

186. The Financial Secretary to the Treasury, Jesse Norman, has disappointingly adopted a very similar approach to the Loan Charge – including answering Parliamentary Questions about it – to his predecessor, Mel Stride.

187. It had been hoped that a new Minister, not associated with the original decision to introduce the Loan Charge, would have looked at the issue objectively and examined evidence rather than taking at face value what HMRC and Treasury officials say. Unfortunately this has not been the case, perhaps inevitably with him serving under the same Chancellor who introduced the policy, Philip Hammond, who was also involved in misinformation around the Loan Charge (please see the APPG's original Loan Charge Inquiry for full details). The change of Chancellor similarly had been hoped to lead to a new approach. But, whilst the subsequent Chancellor, Sajid Javid, has not directly engaged in the same kind of misinformation that previous Ministers engaged in, this has not led to a change in Jesse Norman's approach.

188. The APPG held a meeting with Jesse Norman on 10th July 2019 and also sent him, following this meeting, printed copies of 820 individual impact statements submitted to the Loan Charge Inquiry. This significant amount of evidence clearly shows the reality of the impact of the Loan Charge on individuals and also that the picture painted by HMRC and Treasury officials is simply not a factual or honest one. We had hoped that this would lead Jesse Norman to take a different and evidence-based approach and to agree to properly review the policy. Instead, Jesse Norman, to the dismay of many people facing the Loan Charge (including families of those who have committed suicide), took an even more aggressive approach to dealing with colleagues' questions in the House of Commons. Particularly notable was the way Jesse Norman responded to the question from David Davis MP on 2nd July at Oral Treasury Questions. The Minister ignored David Davis' mention of suicides (as his predecessor had also done several times) and spuriously claimed that somehow a former Chair of the Public Accounts Committee shouldn't be raising legitimate concerns about the documented and devasting mental health impact of a Treasury policy, and should only focus on the amount of revenue it might raise.

189. When responding to questions on the Loan Charge at Oral Treasury Questions on 2nd July 2019, it was notable that Jesse Norman failed to answer the questions as to how many promoters of loan schemes have been convicted of any criminal offences. This was a key area where HMRC and the Treasury had sought to give a false impression previously (as covered in the Loan Charge Inquiry) and it was disappointing that this point was not addressed. In his answer to a question from Sir Oliver Heald, Jesse Norman stated:

"HMRC will continue to take firm action against those who promote tax avoidance schemes. As he will know, and I think has been made public, it currently has more than 100 promoters under civil inquiry. It is important to be clear that although there are no criminal offences of promoting or marketing tax avoidance schemes specifically, HMRC may conduct criminal investigations and make referrals to prosecuting authorities where, for example, there is evidence that promoters have deliberately misrepresented the facts to It."

190. However in a television interview for BBC Politics Live, broadcast on 18th July 2019, Mr Norman then admitted that promoters could not be pursued, saying,

"Well, the difficulty is that unless they've done something that's actually illegal. It is very hard, and of course we're not seeking, in any case, to pass retrospective legislation that would allow us to go after those promoters."

A freedom of information request also exposed that there have been no convictions of promoters of loan schemes, contrary to the false impression repeatedly and deliberately given. In reference to a newspaper article in which HMRC were quoted referring to prosecutions for promoting tax avoidance schemes, the FOI response states:[21]

…there are no criminal offences specific to the promotion of mass marketed tax avoidance schemes.

…

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

191. Another key part of the misinformation has been the conflation of the overall 'Disguised Renumeration Project' and the amounts that might be collected as a result of the Loan Charge. In replying to Jamie Stone MP in Treasury Questions on 2nd July, Jesse Norman gave the misleading impression that the Loan Charge would bring in over £3 billion, when the reality it that is not the case; the £3.2 billion figure (as explained in the section on the misrepresentation of how much employers have paid and will pay) is overall figure for the Disguised Renumeration Project, not the amount expected from the Loan Charge. He stated:

"The Hon. Gentleman is right that there is stress, but he should also be clear that a large number of people have been systematically using those means to avoid paying tax and the potential amount payable is more than £3 billion."

192. The ongoing attempt to conflate the amount of money that might be collected from the Loan Charge – estimated at less than a billion pounds – and the overall sum that may be due from the overall Disguised Renumeration Project is clearly misleading and gives a wholly false picture of

[21] https://www.whatdotheyknow.com/request/553089/response/1336224/attach/html/2/FOI2019%2000534.pdf.html

both the original justification for the Loan Charge and the excuses made for the catastrophic impact it is having on thousands of people.

193. In response to the same question from Jamie Stone MP, Jesse Norman repeated another misleading claim, saying,

> *"a large number of people have been systematically using those means to avoid paying tax."*

This assertion is simply not backed up by evidence which shows that the vast majority of people did not use loan arrangements predominately for the purpose of avoiding tax. The original Loan Charge Inquiry report came to a clear conclusion, which was that loan arrangements were used predominately on the basis of professional advice regarding the best way to continue to comply with the IR35 legislation and that tax avoidance – specifically, personal financial gain as a result of doing so – was rarely a significant factor in people choosing to use these arrangements. The statement from the Minister, in answer to the question, is another example of the sinister HMRC and Treasury propaganda that has been a key part of seeking political support for the Loan Charge. The propaganda seeks to demonise all those facing the Loan Charge as "aggressive tax avoiders" not worthy of any sympathy, fair treatment or any right to appeal.

194. Jesse Norman made a false statement in his response to question from Justine Greening MP on 2nd July when he said,

> *"I trust that my Right Hon. Friend will be reassured by the fact that recently six individuals were arrested on suspicion of promoting fraudulent Loan Charge arrangements."*

In actual fact these arrests were not for promoting Loan Charge arrangements, fraudulent or otherwise. The arrests were for promoting an allegedly fraudulent scheme which claimed to allow people to avoid having to pay the Loan Charge now that the charge is in place. More specifically, this was an alleged scam targeting desperate people who are facing ruin as a result of the Loan Charge legislation. The APPG has pointed out that HMRC and the Treasury have previously sought to misrepresent these arrests and deliberately confuse them with action against promoters who promoted loan arrangements, when they are nothing of the sort, as HMRC and the Treasury are well aware.

195. In oral Treasury Questions on 1st October, Jesse Norman said,

> *"there is also the question of collecting the several billion pounds of back tax that is due."*

190. As well as being yet another example of the deliberate conflation of money that might be collected by the Loan Charge and money from the wider Disguised Renumeration Project, this

statement in itself is factually incorrect. The Loan Charge targets people where no tax has even been legally proven to be due. Giving the false impression that this is "tax that is due" has been another part of the cynical HMRC and Treasury propaganda seeking to justify the Loan Charge. The whole purpose of the Loan Charge is to sweep away any need for HMRC to legally prove any tax is due, including the right of citizens to challenge HMRC's view in court. For Jesse Norman to continue to peddle this cynically false picture is very disappointing.

July 2019 announcement regarding "Closed Years"

196. The Financial Secretary to the Treasury, Jesse Norman, was questioned extensively by the Economic Affairs Committee on 16th July 2019. During this evidence session a number of announcements were made, one of which was that *"a commitment that HMRC will not apply the Loan Charge to a tax year where an inquiry was closed on the basis of fully disclosed information."*[22]

197. The announcement was welcomed by their lordships, but on closer questioning the Financial Secretary appeared to struggle on some of the details, including whether the new policy would apply retroactively to those who had already signed settlement agreements.

198. Many outside commentators quickly seized on the fact that the Minister had used the phrase "fully disclosed" and suggested that this would allow HMRC to exclude large numbers of cases on the basis that HMRC did not view their disclosure as complete. This is despite HMRC levying no penalties or charges against these individuals for wilful or negligent failure to disclose information in accordance with the law.

199. An addition, the exemption from the Loan Charge was specified as applying only if HMRC opened an investigation and then closed it. As described in our previous report, HMRC routinely open investigations and leave the investigation open for many, many years without any progress. Taxpayers are generally unaware that they are required to force HMRC to close investigations which have gone cold.

200. Following the announcement, there has been little else said about this series of clarifications, including the one detailed above. Tax experts we approached have said that HMRC have been unable to provide the details they need to understand them clearly. It can only be speculated that

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[22] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/economic-affairs-committee/Financial-Secretary-to-the-Treasury/oral/103994.html

the publishing of such details was indefinitely postponed due to the commencement of the Loan Charge Review.

201. **The announcement of clarifications in July 2019 has resulted in little clarity and appears to have been a tactic used to quell disquiet in parliament about the Loan Charge policy.**

10. Conclusion and Key recommendations

Summary findings

202. Key findings of the Loan Charge APPG since 5th April 2019 can be summarised as follows.

The risk of additional suicides is increasing as the due date for payment of the Loan Charge approaches

203. Four additional Loan Charge related suicides have been notified to the APPG since April 2019, bringing the total number of known suicide cases to seven. The APPG can assert that the additional suicide cases further reinforce the original conclusion of the Loan Charge Inquiry April 2019. The link between cases of suicide reported to the APPG and the Loan Charge is clear and irrefutable.

204. The APPG's survey conducted in October 2019 shows that the level of suicide risk remains high. The survey results clearly show the level of emotional distress being suffered by those facing the Loan Charge and demonstrate the reasons that this is likely to lead to suicides.

The level of service provided by HMRC to vulnerable individuals is inadequate

205. To date, HMRC has not set up a 24-hour counselling helpline, as recommended by the APPG inquiry in April 2019. Since August 2019, the number of calls to the Loan Charge Action Group's helpline has increased, suggesting that the level of distress is increasing, and reinforcing the need for HMRC to set up a helpline to deal with the mental health issues arising from the Loan Charge policy.

206. HMRC is not providing an adequate service to those who are left to resolve the affairs of suicide cases where a person was facing the Loan Charge. Bereaved family members are reporting significant delays in trying to resolve the tax affairs of their relatives. A delay of a year in resolving the tax affairs of someone who died, with the full cooperation of the bereaved family, is wholly unacceptable. HMRC should give consideration towards a streamlined resolution process that emphasises speed of closure over the collection of the maximum possible revenues.

There is still a high risk of bankruptcy, forced house sales and family breakdown

207. Based on the statistics collected in both the March and October surveys, the APPG concludes that it is likely that the number of actual bankruptcies will increase significantly as the deadline to pay the Loan Charge by 31st January 2020 draws closer.

208. HMRC's reassurances give the impression that there will be few people having to go bankrupt and sell their homes, when this is simply not the case. Of those facing the Loan Charge, a very high proportion will be unable to pay the sums demanded, even over a long timescale and in some cases, due to the large amount being demanded, would be better off declaring bankruptcy than paying a scarcely affordable sum to HMRC for many years. So it is clear, as the original Loan Charge Inquiry concluded, that there will be significant numbers of people having to sell homes and going bankrupt.

209. It is apparent that families of the tens of thousands impacted by the Loan Charge are also being greatly affected by the Loan Charge and that many more will breakdown as the full force of the legislation comes in the near future. The impact assessment by HMRC of the Loan Charge was negligent with regard to this issue.

HMRC have failed to conclude settlements in a timely manner, thereby resulting in a number of impacts to individuals

210. HMRC failed to finalise all settlements by the date that the Loan Charge became due, 5th April 2019. In October 2019, the Government confirmed that of the c. 50,000 taxpayers impacted by the Loan Charge, c. 19,000 are in the settlement process and as at 30th June 2019 only 8,000 had reached an agreed a settlement with HMRC.

211. It is clear that HMRC has failed to properly prepare for the settlement process. This can only be attributable to a lack of proper resourcing or a failure to understand the complexity of the issues underlying the Loan Charge. As a result, HMRC has needed to change the settlement related deadlines a number of times. Settlements were originally expected to be completed in late 2018, then by April 2019, then by 31st August 2019, and currently there is no specified date by which ALL settlements are expected to complete. The APPG considers it unlikely that ALL settlements will be finalised before the Loan Charge becomes payable by 31st January 2020 even where the taxpayer has cooperated fully with HMRC.

212. The moving settlement deadlines have caused considerable confusion and anxiety to individuals facing the Loan Charge. HMRC's statements that people "will not be disadvantaged" as a result of the failures of HMRC are totally inadequate to make up for the months, even years, of

stress that they have faced whilst waiting to discover what HMRC think they owe. The ongoing saga of HMRC setting deadlines for both individuals and HMRC to act – with the threat of severe consequences for individuals if they fail to respond – only to then be ignored by HMRC as the date is passed, is causing intense stress and anxiety.

213. The changing deadlines have also caused confusion for individuals who are unclear what they need to do and by when. The problem is exacerbated because HMRC was unable to conclude all settlement agreements before the Loan Charge came into effect on 5th April 2019. As a result, many individuals are unclear on whether the Loan Charge will actually apply to them and what Loan Charge disclosures they must complete.

HMRC are continuing to issue Time-To-Pay (TTP) instalment plans that are simply unaffordable

214. The APPG has received more evidence that the current settlement offers and TTP terms are simply unaffordable to many individuals. The results of the APPG survey showed that 91% of the 1,164 respondents who had received settlement terms, answered that the settlement terms were simply unaffordable. The automatic 5 and 7 year payment plans will also result in people agreeing to pay monthly amounts that are unaffordable. In some cases resulting in years of struggle to keep up with payments, including high rates of interest.

215. The APPG again proposes that HMRC should provide fairer Time-To-Pay (TTP) terms by offering an automatic 10-year TTP for all taxpayers, without reference to income levels; and to do so at a reduced late payment interest rate. This is in addition to the other measures we have recommended which may result in a reduced liability, or in some cases no liability.

The Loan Charge reporting requirements were unclear and were not suitably communicated by HMRC to all taxpayers

216. Since the Loan Charge came into effect, individuals (and companies) who are potentially liable for the Loan Charge have faced, and are facing, a series of Loan Charge reporting deadlines, which run up to 31st January 2020.

217. The Loan Charge disclosure requirements have resulted in confusion and some people have not completed disclosures due to inadequate communication from HMRC. This will result in people facing automatic penalties for failure to report, through no fault of their own.

Roll out of the IR35 'off-payroll' rules to the private sector, will impact the ability of individuals to complete their settlements or pay the Loan Charge

218. The IR35 'off-payroll' rules are due to be applied to the private sector in April 2020. The inevitable outcome of this policy is that some people currently under "Time-To-Pay" agreements will be unable to continue paying. This would be as a direct result of this latest Government policy and would mean that some people otherwise able to pay the Loan Charge or to settle with HMRC will no longer be able to do so.

219. Considering that IR35 compliance was a key reason that people used loan arrangements, it is deeply ironic that the latest proposed roll-out by the outgoing Government would reduce yet further the amount that might be collected through the Loan Charge and any settlement agreements.

Enforcement activity by HMRC relating to Accelerated Payment Notices (APNs) and other demands appears to have increased.

220. Since April 2019, the APPG has been contacted by a number of individuals and business owners who are being pursued by HMRC's Debt Management department for enforcement of APNs or other payments. 37% of respondents to the APPG survey had experienced enforcement action from HMRC.

221. The APPG is concerned that HMRC is stepping up their enforcement of APN payments in a situation where the taxpayer's right to take a dispute to a Tax Tribunal has already been effectively removed by the Loan Charge legislation. There is no need for HMRC to enforce payment of APNs, as HMRC can already collect the money either through the settlement process or through the Loan Charge.

222. HMRC's continued pursuit of APN's during the Loan Charge Review and whilst individuals are seeking settlement is entirely unjustified and appears to be another method of HMRC applying maximum pressure on people to yield to their demands, whilst the Loan Charge is under review by the Government, and without allowing a judicial process.

223. The Debt Management department of HMRC are being used to apply pressure on individuals to give up any legitimate disputes and to agree settlements, in some cases on terms that are simply unaffordable.

More evidence of unreasonable and incompetent behaviour by HMRC

224. The APPG published a report on HMRC conduct in June 2019 which documented a number of examples of poor conduct from HMRC, including; unaffordable TTP, aggressive communication, threats of bankruptcy, communications at inappropriate times, offering unregulated financial advice, unreasonable delays, incorrect calculations, punitive rates of interest on TTP and unreasonable settlement contract terms.

225. The APPG survey found that delays and communication issues were the scenarios that are most frequently reported, with more than 1,000 individuals confirming that they had experienced these issues. The survey researchers reported that the participants overwhelmingly felt that HMRC are not treating them fairly or professionally.

226. HMRC's conduct during the process of settlements has continued to be very poor. It has fallen well short of the professionalism that should be expected of an organisation with can have such a huge impact on people's lives.

The Loan Charge has not met its objective of helping people to "get out of tax avoidance for good"

227. The evidence gathered by the APPG clearly shows that the introduction of the Loan Charge has not stopped people using similar arrangements.

228. The Loan Charge has done little to reduce the propensity of individuals in general to enter into arrangements that HMRC may challenge in future years. Many individuals had already stopped using the schemes before the Loan Charge was announced in March 2016. The announcement of the Loan Charge could have stopped people from entering into or continuing to use loan-based arrangements. However, the low key introduction of the Loan Charge and the inadequate communication from HMRC meant that many taxpayers were not informed about the Loan Charge until 2018 or 2019.

229. The Loan Charge did not impact promoters and thus offered little incentive for them to cease marketing and taking on new subscribers. As such, the Loan Charge has failed in its key objective of taking people out of loan-based or other tax planning arrangements.

230. The IR35 private reforms are, at the same time, providing a fresh market for the promoters of such arrangements.

The Treasury and HMRC continue to make misleading statements and announcements regarding the Loan Charge and its impact

231. There has been consistent and deliberate conflation of the Loan Charge and the wider Disguised Remuneration Project - along with a misrepresentation of the result of the Rangers Supreme court decision. The amounts claimed to be due from the Loan Charge are not the billions that are claimed.

232. HMRC and the Treasury have given the false impression that the Loan Charge falls mainly on large firms and others who engaged contractors, when this is the opposite of the reality. The burden of the Loan Charge falls mainly on individuals and small business owners.

233. The campaign of misinformation and obfuscation by HMRC and the Treasury has continued, with no change to this occurring as a result of the change of Ministers. We continue to believe that at times this breaches the Civil Service Code and the Ministerial Code.

234. The Financial Secretary to the Treasury, Jesse Norman, has sought to deflect, has provided incomplete and misleading answers and, in at least one case, has made a false statement in answer to questions from MPs and journalists.

235. The announcement of clarifications to the Loan Charge policy in July 2019 appears to have been an effort to dispel parliamentary disquiet regarding the policy. The announcements have had little practical impact on the operation of the Loan Charge or settlements.

Key Recommendations

Urgent announcement of a delay and suspension of the Loan Charge

236. The Loan Charge must be immediately suspended until further notice, so that the next Government can properly examine the situation along with the findings and recommendations of the Loan Charge APPG and the Treasury appointed Loan Charge Review.

237. The calling of the General Election makes it impossible for the current Parliament to discuss the recommendations of the Loan Charge Review when it is submitted to the Chancellor in mid-November, and for a Government to implement its recommendations still allowing reasonable time for people to take appropriate action prior to the 31st January 2020 deadline for self-assessments and payment of the Loan Charge.

238. There is huge opposition to the Loan Charge in the current, outgoing, Parliament of 2017-19. The current, outgoing, House of Commons also voted for a suspension of the Loan Charge.

Considering these facts, it is democratically essential to allow the next, incoming Parliament and Government the time to consider how to address the Loan Charge as a whole. The next Government may, as part of this, seek to amend the Loan Charge; they may take out the deeply controversial retrospective/retroactive element or repeal it altogether. This possibility must be allowed for, by abandoning the 31st January 2020 deadline.

239. The APPG therefore calls for an immediate announcement that the Loan Charge will not be payable by 31st January 2020.

240. There must also be an immediate suspension of all settlement activity by HMRC, including Time-To-Pay agreements and enforcement of APN payments. HMRC must agree to withdraw any payment demands already issued and to not issue any new payment demands.

HMRC must put in place proper mental health support for those facing large and unexpected tax demands as well as for their immediate family

241. The APPG recommends that HMRC should undertake a review of its current procedures for dealing with vulnerable people.

242. The APPG again recommends for HMRC to urgently set up a 24 hour helpline (not related to payment of bills, but a mental health telephone service) staffed by trained counsellors, as recommended by the original inquiry.

243. The APPG also recommends a specialist bereavement unit is put in place to swiftly resolve outstanding tax disputes after someone has died. This unit must be staffed by qualified, trained individuals who are knowledgeable in grief. Families of those bereaved during a tax investigation must be treated with compassion and dignity. It is wrong for families to face months or years of uncertainty following a tragedy and without proper support.

Investigation to assess why HMRC failed to adequately resource the Counter Avoidance department to deal with the settlements process

244. A key issue to explore is whether HMRC truly understood the Loan Arrangements and the applicable tax legislation before the Loan Charge policy was enacted and before the Settlement Opportunity was offered to those impacted.

245. The investigation must also ask why HMRC continued to move deadlines back and back when it was clear that they had no hope of meeting them.

Rationalisation of the tax legislation for self-employed contractors to simplify the distinction between the tax status of employed and self-employed people

246. Tax status should be clear and obvious to those involved and leave no ambiguity.

An independent investigation into the Loan Charge scandal, that specifically investigates the continued campaign of misinformation and obfuscation by HMRC and the Treasury

247. The continued campaign of misinformation and obfuscation by HMRC and the Treasury has continued, with no change to this occurring as a result of the change of Ministers. We continue to believe that at times this breaches the Civil Service Code and the Ministerial Code and believe that there should be a proper, full independent investigation into the whole Loan Charge scandal that specifically includes investigating this.

248. **We repeat our recommendation that there needs to be a full, independent inquiry into the Loan Charge scandal. This must have a wider remit that the current Loan Charge Review – which was deliberately restricted by the Treasury – and also with a more reasonable timescale (which was also restricted by the Treasury to avoid having to suspend the Loan Charge). This inquiry must be allowed full access to all information, including internal HMRC and Treasury documentation and correspondence since the Loan Charge was envisaged.**

Appendix A: Loan Charge Inquiry Report April 2019

http://www.loanchargeappg.co.uk/wp-content/uploads/2019/05/Loan-Charge-Inquiry-Report-April-2019-FINAL.pdf

Appendix B: Loan Charge Inquiry Survey March 2019

http://www.loanchargeappg.co.uk/wp-content/uploads/2019/04/Loan-Charge-APPG-Loan-Charge-Inquiry-Survey-Report-March-2019.pdf

Appendix C: Document on HMRC Conduct June 2019

http://www.loanchargeappg.co.uk/wp-content/uploads/2019/06/Loan-Charge-APPG-document-on-HMRC-conduct-June-2019.pdf

Appendix D: Loan Charge Survey October 2019

http://www.loanchargeappg.co.uk/wp-content/uploads/2019/11/Loan-Charge-APPG-Survey-Report-October-2019.pdf

Appendix E: Document on Employers percentage from Loan Charge

http://www.loanchargeappg.co.uk/wp-content/uploads/2019/11/Loan-Charge-APPG-document-on-Employers-percentage-from-Loan-Charge-November-2019.pdf

Appendix F: Additional Evidence Submissions post 5 April 2019 – links to repository

Promotional documents for arrangements that aim to circumvent the Loan Charge: https://ln2.sync.com/dl/fa05c18b0/gzqmaq4q-2nj7mbn8-nh7vnuz9-zwk479dh

Promotional documents for arrangements that are still being offered as at November 2019: https://ln2.sync.com/dl/36270a420/qu9n5jww-4djkhvhm-stfdjrtf-dqn6rmbh