Loan Charge All-Party Parliamentary Group

Report on the Morse Review into the Loan Charge

March 2020

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

The Loan Charge APPG reformed in January 2020 in the new Parliament. A review into the Loan Charge was commissioned by the Treasury and led by Sir Amyas Morse, and was published on 20th December 2019 alongside the government's response. Draft legislation to implement the announced changes to the Loan Charge and HMRC guidance has also now been published. This report analyses the recommendations of the Morse Review and the impact to taxpayers.

The key findings of the Loan Charge APPG are summarised as follows:

1. **The Terms of Reference of the Morse Review were limited and involved far too much input from HMRC and the Treasury to be considered independent.**
   - Key points of concern were the staffing of the review with resources from HMRC/HMT and also the limited timeframe allocated.
2. **The Morse Review is flawed in concluding that the law was clear from December 2010 in respect of the tax position of loan arrangements that were marketed after this date**
   - The 2011 legislation only applied to employer-employee loans paid from a third party. It did not apply to self-employed arrangements or employed arrangements where no third party was involved. The law became clear in 2016/2017.
3. **After 2010 taxpayers were given assurances by reputable advisers and even, to some extent, by HMRC with regard to their use of the schemes**
   - The loan arrangements were advertised and backed by chartered accountants, QCs and even the Big Four accountancy firms. Some taxpayers contacted HMRC before signing up to use them.
4. **The new Loan Charge terms are disproportionate and unfair to those still impacted**
   - The Loan Charge is still retrospective, it still overrides statutory taxpayer protections with regard to time limits, it still removes the right to rely on the usual legal channels such as the tax tribunal for resolution of the tax dispute.
5. **The recommendations in respect of closed (unprotected) years do not go far enoug**h
   - Unprotected years are only exempt from the Loan Charge if 'reasonable disclosures' were made on the tax return, however the disclosure requirements are onerous
6. **The new Loan Charge terms have had some negative and unintended consequences**
   - Those who settled/repaid loans before the Morse review, but are now exempt from the Loan Charge, may be at a disadvantage compared to those who waited.
   - For pre-2010 years, those who disclosed less information to HMRC are likely to benefit more than those who disclosed more.
7. **The recommendations of the Review do nothing to close the situation for taxpayers on open tax years pre or post December 2010**
   - The Review recommended more affordable/flexible time-to-pay terms but did not address the settlement terms. Offering simpler and less punitive settlement terms may increase the number of settlements and help HMRC to clear its backlog.
8. **Taxpayers who are no longer impacted by the Loan Charge do not have certainty**
   - Some who are no longer impacted by the Loan Charge fear that HMRC will still find other ways to pursue them.
9. **The recommendations of the Morse Review do not fully consider small-medium businesses**
   - The recommended criteria to determine if the Loan Charge applies in respect of disclosures and unprotected years are not adequate for SMBs and their Directors.

Key findings continued…

10. **The recommendations of the Morse Review do not help the public sector workers who were advised to use loan arrangements after IR35 reforms rolled out to the public sector in 2017**
    - Loans received after 2016-17 may still be subject to the Loan Charge.
    - These workers were mis-sold arrangements and need a way to legally pursue the promoters for mis-selling. They should also have access to a lower percentage settlement opportunity for years that are under enquiry or subject to the Loan Charge.
11. **Some recommendations of the Morse Review have been rejected or have not been fully accepted. These recommendations should be fully implemented.**
    - To write off liabilities after 10 years of reasonable payments for low earners.
    - To contact taxpayers once a year to update them of the status of open enquiries.
12. **The implementation of the Morse recommendations is complex and confusing to taxpayers**
    - The documentation is extensive and the draft legislation may be incomprehensible to an ordinary taxpayer, thus increasing the dependency on professional advisers
13. **Many people are still impacted by the Loan Charge following the Morse Review**
    - It is estimated that c. 40,000 taxpayers are still impacted, in the majority of cases the changes will have limited or no impact on the tax demanded by HMRC.
14. **The risk of further suicides remains critically high**
    - To date the LCAG help line has received 282 distress calls. This number may be as high as c.560 if emails, Twitter interventions and follow up calls are included.
    - Distressed Loan Charge victims continue to contact the Loan Charge APPG on a regular and ongoing basis.
15. **The recommendations of the Morse Review do not stop loan arrangements or other similar arrangements from being offered to unsuspecting taxpayers**
    - There is no evidence of any action being taken by HMRC against promoters or of proposals to tackle future promotion of schemes – making promoters personally liable could help to eliminate mass marketing of schemes going forwards.
16. **Some taxpayers are now facing 'recall' demands to repay their loans or to pay a significant fee to release them of their obligation to repay the outstanding loans**
    - If loan recalls are enforceable then taxpayers may be required to pay back the loan and pay HMRC the demanded tax amount.
    - Recommendations should consider taxpayer protections to ensure that they cannot be pursued by both HMRC and the loan company for tax and repayment of the loan.
17. **There has been no attempt to hold HMRC to account for past failures, incl. legislative process**
    - There is a need for a full independent inquiry into HMRC's conduct and culture (as recommended by the Loan Charge APPG in our Loan Charge Inquiry). This should include looking into HMRC's use of behavioural psychology / behavioural insights.
18. **There is more evidence of HMRC conduct and administrative failures (received since the Morse Review was published)**
    - Examples include inappropriate timing of HMRC correspondence, inadequate communication between HMRC departments leading to taxpayer distress and lead cases in tax tribunals being coerced into settlement causing cases to collapse.
    - HMRC and the Treasury continue to mislead MPs and journalists including over action against promoters and other impacts as described in the Loan Charge Inquiry.

Recommendations:

The list below represents a complete and current list of the recommendations of the Loan Charge APPG following the publication of the Loan Charge review.

Recommendations relating to the Loan Charge

1. The Loan Charge should be made prospective from 16th November 2017, being the date of Royal Assent of the Finance Bill, instead of retrospective from 9th December 2010.
2. A reinstatement of taxpayers' statutory rights to defend against HMRC's enquiries into any 'open years' in a tax tribunal or court of law, as the law was at the time of the transactions.
3. To entirely remove ALL 'closed' years (also known as 'unprotected years') from the scope of the Loan Charge.
4. If 'reasonable disclosure' remains part of the criteria for determining if the Loan Charge applies, then the definition of 'reasonable disclosure' needs to be adjusted to reflect what taxpayers would have been expected to disclose at the time. **[NEW]**
5. To accept the recommendation of the Review that those with an income under £30,000 p.a. should have outstanding tax liabilities written off after 10 years of making reasonable payments. **[NEW]**
6. Where the Loan Charge no longer applies then those who repaid loans under the threat of the Loan Charge should not face adverse tax consequences compared to those who did not repay their loans. **[NEW]**
7. That the owners of small and medium sized businesses (SMBs) which are subject to the Loan Charge are properly considered in the implementation of any concessions. **[NEW]**
   Recommendations specific to SMBs include:
   i) Acceptable disclosures based on company accounts, not just on personal tax returns.
   ii) Remove HMRCs ability to claim to have taken action against an individual when they only took action against the SMB.
   iii) HMRC should not be allowed to override statutory protections already in place for SMBs.

Recommendations relating to settlements

8. For Treasury Ministers to change policy and instruct HMRC to offer the option of a 10% full and final settlement rate, or an alternative settlement offer that is fairer and less punitive than the current terms, on any open/protected years for any taxpayers who wish to simply draw a line under the past and move on with their lives. **[AMENDED]**
9. For the lower percentage settlement offer to be available to anyone who is still impacted by the Loan Charge. **[AMENDED]**
10. Where HMRC have failed to progress enquiries, to remove late payment interest which HMRC are imposing on settlements over extended periods at rates which are disproportionate to the cost to HMRC **[AMENDED]**
11. To recognise that Inheritance Tax is being imposed in situations that do not make sense and that legislation should be enacted to remove IHT where a taxpayer has paid the LC or otherwise settled the tax enquiries. **[NEW]**
12. To implement legislation to ensure that any taxpayer who has settled with HMRC on the basis that loans are considered to be income for tax purposes, cannot be forced to repay the loans or to make payments to release the obligation to repay. **[NEW]**

Recommendations continued…

Other recommendations that affect the taxpayer

13. For HMRC to include a sentence or paragraph on all correspondence to the taxpayer that notifies the person of their right to request a closure notice in respect of their open enquiries. The exact wording must be defined in statute. As per the Morse recommendations taxpayers should receive an update from HMRC on the progress of their enquiries at least once a year. **[NEW]**

Recommendations relating to HMRC / HMT processes

14. **A full and independent inquiry into the Loan Charge scandal.** This must properly and fully examine the whole issue in a reasonable timescale. It must investigate the behaviour and conduct of HMRC. It must include a review of the treatment of taxpayers. It must also investigate the strategy behind the issuance of often misleading communications by HMRC and the Treasury. **[AMENDED]**
15. To take **appropriate disciplinary action** against HMRC and Treasury staff who have knowingly been involved in misrepresentation of information, misinformation and failing to properly assess the expected impact of the Loan Charge policy. **[AMENDED]**
16. **An investigation to assess why HMRC failed to adequately resource the Counter Avoidance department** to deal with the settlements process.
17. **An independent investigation into the conduct of HMRC with regard to Accelerated Payment Notices (APNs)** and if they are being used appropriately. **[NEW]**
18. **An independent assessment and a suspension of HMRC's use of behavioural psychology / behavioural insights**, in light of the ongoing suicide risk to those impacted by the Loan Charge.
19. The Loan Charge APPG also backs the recommendation of the House of Lords Economic Affairs Committee (EAC) for **a new 'Powers Review'** into HMRC and to make HMRC more accountable.

Other recommendations

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

Recommendations not carried forward

1. **A fully independent Review into the Loan Charge**, not staffed by HMRC/the Treasury or victims, and 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.**
    - Although the Loan Charge APPG has made it clear that we did not consider the Sir Amyas Morse Review to be fully independent, it is recognised that there is probably insufficient time for another review to be completed at this point in **time.**

1. Introduction

1. In September 2019 Sir Amyas Morse was commissioned by the Treasury to undertake a Review of the Loan Charge. He issued his report on 20th December 2019[1]. The Government response[2] was published on the same day along with a first version of guidance notes[3] from HMRC.

2. The draft legislation to bring these changes into force has recently been published in two parts. The first part[4] covers amendments to the scope of the Loan Charge was published on 20th January 2020. The second part[5] covers refunds of payments made under voluntary restitution where the Loan Charge no longer applies was published on 27th February 2020. This legislation for both parts will be enacted in this year's Finance Bill (2020). The guidance notes have also been updated and extended since the original guidance was published on 20th December 2019.

3. The Government announced that it would accept all but one of the recommendations. However, a review of the draft legislation and guidance shows that a number of the accepted recommendations have only been partially accepted.

4. Whilst the Loan Charge APPG welcomes a number of the recommendations of the Morse Report, we wish to make it clear that the changes do not go far enough and do not help, or indeed provide assistance to, the vast majority of those people impacted by the Loan Charge. At least 40,000 people and their families are still facing life-changing bills for tax that has never been legally proven to be due. Some will be forced into bankruptcy and mental illness, and there remains a risk of further Loan Charge suicides (at least seven at the time of writing).

5. There are a number of issues outstanding, however one key conclusion of the Morse Review, that "the law was clear from 2010", does not bear up to scrutiny. This document explains why this conclusion is wrong and consequently that the recommendation that the Loan Charge should still apply retrospectively from 2010 up to 2017 is wholly unjustified. This document also looks at the wider impact of the recommendations of the Morse Review to both those who are still impacted and those who are no longer impacted by the Loan Charge.

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[1] Morse Report – see Appendix G
[2] Government response to the Morse Report - see Appendix H
[3] HMRC guidance following the Loan Charge Review - see Appendix I
[4] Draft legislation – Loan Charge – see Appendix J
[5] Draft legislation – Voluntary Restitution – see Appendix K

2. Terms of Reference (ToR) of the Morse Review

6. On 18th September 2019 we wrote to the then Chancellor of the Exchequer, Rt Hon Sajid Javid MP to outline our concerns regarding the ToR[6] of the Morse Review. That letter is attached as Appendix D1. The following paragraphs explain our concerns in summary.

7. **Independence:** the position of the APPG was that the appropriate person to conduct a genuinely independent review would be an experienced tax judge who has a firm understanding of the relevant tax laws and is impartial. In addition, the ToR give a key role to the Director of Personal Tax, HMT, who would be responsible for staffing, supporting and making available the required information to the Review. Finally, the ToR clearly suggest that the Review will be dictated by the Treasury behind the scenes.

8. **Suspension**: while the APPG welcomed the news that the process of agreeing new settlements would be put on hold until after the Review was completed, this provided no relief to those already making settlement payments or to those in receipt of APNs against sums deemed by HMRC to be due. We have been outraged by reports coming to us about the way that HMRC has conducted itself and in particular note the open letter published by the Loan Charge Action Group helpline volunteers, which we attach as Appendix F1 for your further information.

9. **Scope:** in the APPG's opinion this was unnecessarily narrow and focused on the Loan Charge itself. It does not consider the wider issues such as a) whether the Loan Charge undermines the rule of law by imposing HMRC's opinion of the operation of the legislation with no possibility of appeal on the part of the taxpayer; b) as HMRC's contentions have not yet been tested in the courts, whether any tax is due at all from the parties in these quite complex arrangements and c) whether it is right for HMRC to open investigations many years ago and proceed to do nothing, thereby implying acceptance of taxpayers' actions. Finally, the ToR only allow for the Review to consider one tranche of taxpayers impacted by the Loan Charge.

10. **Timeframe:** the APPG feels that the timeframe for the Review forced a rushed job which would be unable to properly examine all the relevant issues.

11. **Biased and Misleading Narrative:** the Introduction to the ToR appears to pre-judge taxpayers motives in entering these arrangements and uses emotive and biased terms which present the Government's opinions as fact. The ToR of such a Review should not seek to prejudice its findings.

[6] Independent Loan Charge Review Terms of Reference (ToR) – see Appendix L

3. The Morse Review Findings

12. The Morse Review[7] looked at whether the Loan Charge is justified in principle and whether its design is proportionate and fair.

13. The Loan Charge was designed to "shut down the use of loan schemes" and to collect revenue "efficiently".

14. Morse wrote that he supported the essential purpose of the Loan Charge but found the design to be highly unusual. He found that:

- The Loan Charge overrides statutory time limits on taxpayer investigations.
- The Loan Charge, as legislated, looks back 20 years and this did not strike the "right balance" of being fair or proportionate.
- That the law was made clear in December 2010 and that after this date the schemes "did not work".
- That taxpayers are fully entitled to rely on the prevailing law as interpreted by the courts – rather than a position taken by HMRC – as the authoritative guide to their tax obligations.

15. Those impacted by the Loan Charge include many on mid to low incomes who relied on the advice of professional advisers.

- Around 40% of those who have not yet settled earn less than £30,000 per annum, and more than 25% earn less than £20,000. The lower a person's income, the less affordable the Loan Charge or settlement terms become.
- Not everyone facing the Loan Charge gained financially by using the loan arrangements due to the high fees charged by the promoters and tax advisers.

16. HMRC's duty is to collect the right amount of tax, not the maximum that could possibly be collected. HMRC's performance and accountability require more scrutiny in light of their significant increase in powers.

[7] Morse Report: see Appendix G

4. The Morse Review Conclusions

17. The primary recommendations of the Morse Review[8] are listed below. The government has claimed to have accepted all but one of the Morse Review recommendations. On closer examination, a number of the recommendations were in fact only partially accepted or their impact was watered down from the actual Morse recommendations.

- Loan Charge to apply only to loans received after 9th December 2010
  Fully accepted

- Loans received between December 2010 and April 2016 are exempt from the Loan Charge if "reasonably disclosed" to HMRC
  Accepted (but with 'reasonable disclosure' defined in such a way as to exclude almost all cases]

- All loans after April 2016 (when the Loan Charge was announced) are subject to the Loan Charge without exception.
  Fully accepted

- Refund voluntary settlements payments where the person would have been exempt from the Loan Charge under the new recommendations (applies to closed/unprotected years only)
  Fully accepted

- Option to spread the Loan Charge evenly over three tax years (2018-19, 2019-20, 2020-21)
  Fully accepted

- No one to pay more than half of their "disposable income" in any one year
  Altered (Exception for those with 'very high disposable income')

- A new 2020 settlement opportunity for pre-2010 loans no longer subject to the Loan Charge
  Fully accepted

- After 10 years for the remaining tax liability to be written off for those earning <£30k per year
  Rejected

- 5 & 7 year automatic time-to-pay terms to be extended to Loan Charge liabilities
  Fully accepted

[8] Morse Report: see Appendix G

- HMRC to fund an external body to assist lower income taxpayers
  Fully accepted

- HMRC to write to anyone under investigation annually and ensure they are aware of their right to request closure
  Partially accepted (HMRC will review their procedures – no requirement to be enshrined in statute)

- Reports on the implementation of the Loan Charge and future policy regarding interest charges
  Fully accepted

- Better communication of Government policy, improved regulation of the market for tax advice and clarification of how taxpayers can challenge mis-selling of loan arrangements
  Accepted

- Better communications from HMRC to taxpayers and better usage of information available to HMRC
  Fully accepted

- Review of the HMRC charter and improved training of staff
  Partially accepted (HMRC will review their charter – no mention of training)

- Future policy changes to be subject to proper impact assessment including on individual; Lessons should be learned from the experience of the Loan Charge
  Fully accepted

5. Evidence sourced by the APPG

18. Following the release of the Morse Review report[9], the Loan Charge APPG reached out to tax experts to gather their views of the report and recommendations.

19. The APPG held two panel evidence sessions on 20th January 2020 and on 4th February 2020, the first being with tax experts and the second with Loan Charge victims – those facing the Loan Charge.

20. The APPG publicly announced that they wished to receive evidence to support some of the behaviours that tax experts and Loan Charge victims reported during the panel sessions.

21. The APPG also contacted the specific parties who were consulted in the Morse Review and reviewed the reference documents that are listed in the Morse Review report, to gather more information on the specific point of whether the law was clear from December 2010 and how Morse arrived at the conclusion that the law was clear from that date. The more detailed evidence gathered on this specific point is documented in Section 7 of this report.

Panel Session 1 – Tax Experts

22. On 20th January 2020, the Loan Charge APPG invited Keith Gordon (Barrister, Temple Tax Chambers), Rhys Thomas (Managing Director, WTT Consulting) and David Logan (Managing Director, TAG Tax) to discuss the Morse Review report findings and the government's response. Note, this discussion was based on the initial documents and content published on 20th December 2019. The draft legislation and updated guidance was not published until 20th January 2020, the same day that this evidence session was held, and therefore the updated content of the later publications was not discussed.

23. The following topics were discussed:

- Review recommendations – The December 2010 cut off point for retrospection
- Review recommendations – HMRC/Treasury redefining 'closed years'
- Review recommendations – 'Reasonable disclosure' vs 'full disclosure'
- Review recommendations - Disposable income
- Review recommendations – failure to address the overly punitive settlement terms

[9] Morse Report – see Appendix G

Review recommendations - the December 2010 cut off point for retrospection

24. The tax experts gave credit to Sir Amyas Morse for seeking to identify a cut-off point for retrospection, but they felt that he gave the 2011 ITEPA 'Part 7a' legislation far too much importance and also failed to differentiate between employed and self-employed arrangements.

25. They stated that the 2011 legislation is important, but that it relates only to the arrangements that were used up to that point in time, specifically 'employed' arrangements where an Employee Benefit Trust (EBT) or other third-party made loans to employees. They commented that, following the passage of this legislation, these specific arrangements generally ceased.

26. They commented that post 2010, schemes were mostly sold to people who were registered as self-employed and that this removes them entirely from the scope of the Part 7a rules. They acknowledged that any which continued to operate in defiance of the Part 7a rules could be easily pursued by HMRC under the normal tax enquiry process.

27. They discussed that, contrary to the Morse Review conclusion, the law was not clear when it comes to self-employed arrangements or for employed schemes that did not involve a third-party. They believed it to be unfair and retrospective to apply the Loan Charge to arrangements that were not clearly identified in the 2011 legislation.

28. They also raised the point that it is unfair to treat those who took professional tax advice pre 2010 and those who took professional advice post 2010 differently; the law at the time should be applied to both, rather than a retrospective change to the law affecting only those who used loan arrangements post 2010. They commented that reputable tax professionals continued to advise on Loan schemes after 2010 and that some arrangements were only sold through accountants.

29. They discussed that the Part 7a rules are highly complex and beyond the ability of a lay businessperson to understand. This complexity means that non-experts (the taxpayer) can only rely upon expert advice regarding its application. Considering that Part 7a was deemed not to apply to self-employed arrangements or some employed arrangements, it is not then fair to say that people should have known that such schemes 'did not work' after December 2010 as the Morse Review has suggested.

30. It was also pointed out that the 2011 Part 7a legislation was ultimately found to be completely unnecessary for employed arrangements as there was a much simpler way for HMRC to show that tax was due at an earlier stage in the chain of transactions i.e. when funds were paid from the employer to the (third-party) trust.

31. APPG members asked if HMRC or the government had ever claimed that the Part 7a legislation provided the justification for the Loan Charge. The experts were clear that they had not. The government's message has been that they 'were always clear that the schemes didn't work'. Part 7a made clear that the arrangements marketed before 2010 do not work after 2010.

Review recommendations - HMRC/Treasury redefining 'closed years'

32. The experts described how the term 'closed year' usually has a different meaning to the taxpayer versus HMRC. They explained that to the taxpayer a 'closed year' can be an 'unprotected year', where HMRC has failed to open an enquiry or assessment in the specified time limits, or it can be a year where HMRC has opened an enquiry and then closed it. However, to HMRC an 'unprotected year' is not the same as a 'closed year'.

33. The experts opined that it was likely that only 'closed years' from 2011 onwards would be excluded from the Loan Charge. It is likely that this opinion was based on a statement made by Jesse Norman, Financial Secretary to the Treasury. During an Economic Affairs Committee evidence session on 16th July 2019, an announcement was made that they *"will not apply the Loan Charge to a tax year where an inquiry was closed on the basis of fully disclosed information."*

34. Further to the panel meeting with experts, the APPG has confirmed that the Morse Review recommendations and the published draft legislation and guidance pages refer only to 'unprotected years' where HMRC did not protect their position in the statutory time limits. The documentation does not refer to 'closed years'. This means that only the 'closed years' that are also 'unprotected' will be out of scope if the appropriate disclosures were made. All 'closed years' where HMRC can still protect their position within the statutory time limits are still in scope for the Loan Charge.

Review recommendations – reasonable disclosure vs full disclosure

35. This topic was discussed due to the initial version of the HMRC guidance issued on 20th December 2019 stating that 'full disclosure' was required, instead of 'reasonable disclosure' as per the recommendations of the Morse Review.

36. The experts discussed that some people will have been advised that they had no requirement to include any disclosures on their tax returns. Indeed, HMRC told some people that they were not required to submit tax returns for a number of tax years. Others were not sent a notice by HMRC to submit a tax return, therefore no disclosure would have been made. The experts gave some details of the circumstances where a person might have no legal requirement to submit a return.

37. The experts expressed an opinion that it would be very hard to legislate for "full disclosure" and that it may open the door to significant litigation. They noted that if "full disclosure" required the disclosure of a DOTAS number then this is something that was out of the hands of the contractor as only the promoter can apply for DOTAS registration.

38. They discussed that the term 'reasonable disclosure' might build upon either the 'discovery rules' and what constitutes 'deliberate' or 'careless' behaviour by the taxpayer, or upon the 2014 EBT settlement opportunity. The 2014 definition looked beyond the individual's tax return and also considered any disclosures made by the employer on the Corporation Tax return.

39. Since the Morse Review was published in December 2019, the requirement in the legislation has been defined as 'reasonable disclosure' and additional guidance has been published by HMRC on this topic. Section 9 discusses the requirement for reasonable disclosure in more detail.

Review recommendations - disposable income

40. APPG members asked the experts for clarification on the meaning of 'disposable income', which is mentioned in the Morse Review report and in the government's response, in the context of Time-to-Pay terms. The experts described the process of completing an Income and Expenditure report to calculate disposable income. HMRC do require the elimination of what they regard as non-essential expenses (e.g. Sky subscription, gym membership) when calculating this.

41. APPG members discussed that there is an inherent difficulty for contractors who may have irregular income, especially with the proposed introduction of the new IR35 rules for the private sector[10]. The tax experts suggested the need for more flexibility in the settlement terms issued by HMRC.

42. This is backed up by a considerable amount of evidence provided by individuals to the APPG. For example those who received Time-to-Pay instalment offers and where the required monthly

[10] On 17th March 2020 the rollout of the Off Payroll Working Rules for the private sector was deferred by twelve months to April 2021

payment far exceeded their entire monthly income. It is unclear how HMRC will be able to offer time-to-pay plans based on 'disposable income' especially for low earners and pensioners.

Review recommendations – failure to address the overly punitive settlement terms

43. Experts discussed that the Morse Report has still not brought closure for many people who wish to settle and they are still unable to move on with their lives.

44. APPG members expressed concern for their constituents who have already put their lives on hold for several years. The legislation will not be finalised until summer 2020 and only after this will people understand the full impact. APPG members expressed concern that their heavy caseload on this topic will continue for some time.

45. One expert highlighted that for many people, the wording of the settlement contracts is a reason not to sign. The terms include various statements whereby the individual is required to admit to having been a tax avoider. HMRC will not agree to a settlement which removes these statements.

46. The tax experts discussed the recommendation from Sir Amyas that, for lower earners, tax unpaid after 10 years of reasonable monthly payments should be written off. The government rejected this recommendation. In the opinion of the tax experts, either this indicates that a very large number of such people fall into this category which may significantly impact the revenue that the Treasury expect to collect, or it is simply "wicked".

47. The tax experts gave a number of suggestions of how HMRC could make the settlement terms more affordable and increase the number of agreed settlements. It was suggested that the new 2020 settlement opportunity may give scope for revisiting these suggestions:

- 10% tax rate raised in the Finance Bill Committee and also in the APPG's inquiry report
- Allowance for the fees paid to the promoter (deducting these from the individuals tax liability)
- Removal of any claim to Inheritance Tax
- Removal of historic interest charged prior to 2016
- Removal of the additional 1% "forward interest" which is charged in addition to normal "late payment interest" under a time-to-pay contract

- The acceptance by HMRC of a basic tax rate PAYE credit on all loans advanced

The last suggestion on the list was previously put forward previously by one of the experts to HMRC. By applying the basic rate tax credit, the lowest-paid employees would not face any liability at all and it reflects a view that the employer incorrectly applied PAYE rules in the past. They explained that the proposal received considerable interest from HMRC initially before being dismissed out of hand when considered at a more senior level.

Review recommendations - complexity and unintended consequences

48. The experts stated that the announced changes have in many ways added significant complexity to the situation.

49. There is still no clarity around Inheritance Tax on loans released by Trusts. They explained that HMRC will add this to settlements even if HMRC say themselves that they are unsure if it applies to these Trusts. It would appear to be a simple fix to state clearly in legislation that Inheritance Tax does not apply to such settlements. APPG members voiced opinions that Inheritance Tax in these circumstances is “outrageous” and were broadly supportive of removing this providing that it does not open up other issues.

50. One expert highlighted an unintended consequence of the changes that may not have been properly considered by HMRC. Those who already settled under the threat of the Loan Charge, but who are due a refund because the Loan Charge no longer applies, may be subject to another tax charge when their voluntary settlement is refunded. The tax charge may be triggered if their loans were written off by the trust as part of the voluntary settlement agreement. The tax charge is triggered because if loans are written off without already having been taxed as income, then tax becomes chargeable at the point of the loan write-off. In this case the taxpayer is penalised for having taken action i.e. agreeing settlement before the Morse Review. If they had waited then there would be no settlement to pay and hence no loan write off to trigger another tax charge. This ‘concession’ could leave people with a bigger tax bill than the settlement.

Review recommendations – notifying taxpayers of their right to request closure of enquiries

51. One expert raised the point that currently HMRC may keep enquiries open indefinitely as taxpayers are generally ignorant of their rights to request closure. The Morse Report made a recommendation which was not fully adopted. There is an opportunity for a quick win by

establishing a statutory requirement for HMRC to include a statement in all correspondence setting out that a taxpayer who is under enquiry has a right to request closure.

52. The tax experts also spoke about cases where HMRC had failed to deliver correspondence to a taxpayer informing them that an enquiry had been opened.

HMRC's sinister threat for pre-2010 years

53. The experts viewed HMRC's announcements that they will be looking for alternate ways to collect the tax from pre-2010 years as very sinister. One expert said that recent experience shows that one 'cannot trust HMRC at all'. APPG members expressed surprise that HMRC could seek tax from so long ago and from years where the taxpayer may have destroyed records as they are over 7 years old (the legally required retention period).

54. One tax expert stated that he has no faith that HMRC will not try to still claim money from pre-2010 years for which HMRC have never opened an enquiry. They felt that they still cannot advise clients in this position that they are safe from any HMRC action, even if the law is completely clear.

Other topics discussed

55. Other topics that were discussed in the expert panel session are listed below. As these points were not addressed by the Morse Review the evidence is documented under section 8 'Issues not dealt with by the Morse Review':

- Loan Charge covers up past HMRC failures it does not prevent future use of schemes
- HMRC administrative failures / departments not joined up
- loans are now being called in for some arrangements

Panel Session 2 – Loan Charge Victims

56. On 4th February 2020, the Loan Charge APPG invited five individuals who are, or were, facing the Loan Charge to a panel session to discuss how the Sir Amyas Morse Report findings and the government's response have positively or negatively impacted on their situation. The panel included a social worker, a veteran and professionals from IT and financial services sectors.

57. A number of topics were discussed:

- limited or no impact on liabilities faced

- unintended consequences of settling before the Morse Review
- ongoing uncertainty even where the Loan Charge no longer applies

Limited or no impact on liabilities faced

58. One victim said that they understand they will now no longer face the Loan Charge as the loans were all received prior to 2010 and, apart from one year which they settled many years previously, and their tax affairs have not been enquired into by HMRC.

59. Three of the victims received most or all of their loans after 9th December 2010 and were still significantly impacted by the Loan Charge under the new terms. The amounts in question for those victims ranged from £41,000 to £350,000.

60. The fifth victim had already settled in 2018 and therefore does not benefit from the new terms. In fact, they explained that they were now at a disadvantage compared to others who had not already settled. This evidence is covered in the sections below.

Unintended consequences of settling before the Morse Review

61. One victim told how they are now at a disadvantage as a result of having settled before the Morse Review, compared to others who are in a similar situation but who have not yet settled.

62. The victim told how in 2018 they were coerced by HMRC to settle after they were selected by HMRC to be one of several lead cases in litigation for a loan scheme. They explained that all lead cases were put under considerable pressure by HMRC to settle. Faced with the options of settlement versus an even larger bill (including tax on promoter fees plus penalties) if litigation was lost or if the Loan Charge was payable, the victim chose to sell their house and settle with HMRC. They settled for all periods pre and post December 2010.

63. The victim told the APPG that although part of their settlement related to periods before December 2010, they are not eligible to claim a refund under the new Loan Charge terms announced because those years were open / under enquiry by HMRC. This means they cannot have their case decided in a tax tribunal / court of law, which is a right that has been reinstated for those who have open years before December 2010 but did not settle.

Ongoing uncertainty even where the Loan Charge no longer applies

64. One victim who is no longer facing the Loan Charge told how, despite the Loan Charge no longer applying to their loans, they feel that the Review has left them with no certainty even for closed

years. The doubts stem from HMRC's announcement of a new team which will be focused on the pre-2010 arrangements and an inability to trust HMRC in general having had the experience of the Loan Charge.

Other points discussed

65. The following topics were also discussed by the victims. As these points were not addressed in the Morse Review the evidence is documented under section 8 'Issues not dealt with by the Morse Review':

- HMRC behaviour
- People are now facing loan recalls

Other evidence - assurances

66. In March 2020 the APPG publicly announced that they wished to receive evidence to support some of the behaviours that tax experts and Loan Charge victims reported during the panel sessions on 20th January and 4th February 2020. The main topic of interest was assurances given to individuals by tax advisers. Evidence collected by the Loan Charge APPG in 2019 under the former parliament has also been reviewed.

Evidence that members of Chartered Institutes advised on Loan arrangements after 2010

67. The APPG received a large number of emails from victims that show advice was being received from chartered accounting firms and also from individual's accountants who are members of professional bodies such as ACA, ACCA and ICAEW.

68. The APPG also received evidence on this topic from the experts who attended the APPG panel evidence session on 20th January 2020 and from the experts who consulted to the Morse Review (see section 7).

69. Some victims were told that their schemes were not 'tax avoidance' schemes and therefore did not need to be disclosed to HMRC. One victim forwarded an email from July 2011 when they were first introduced to the AML scheme by a firm of chartered certified accountants, who were also a registered auditor. The correspondence from the accountant included phrases such as,

> *"The solution is not a tax avoidance scheme."*

> *"There are 1500 other partners in the co-operative, so it is not a small affair – it is substantial."*

"The solution allows you to join the co-operative and operate as a self employed consultant so that you benefit from the tax breaks of being self employed and have the benefit of the co-operative doing all the admin for you."

70. Another victim, again using the AML scheme, received the following assurances from their chartered accountant in 2015 when they were first put under enquiry by HMRC regarding the 2011-12 tax year,

"HMRC are aware of solutions like ours, however AML do not contain any of the Hallmarks of being a 'Tax Avoidance Scheme' and as such we are not required to be DOTAS registered."

71. The APPG has also received evidence of promotional marketing brochures given to individuals who used the loan arrangements. Schemes were often marketed as being backed by experienced tax QCs and designed by ex-employees of HMRC and the Big Four / other reputable accountants. For example, one brochure states,

"The solution is supported by leading Queen's Counsel's tax Opinion and by ongoing tax advice provided be a leading top 20 firm of Chartered Accountants."

"It is fully compliant with current legislation."

"Professional tax advisers are retained and leading tax Queen's Counsel's opinions are obtained to ensure that their solution remains robust and compliant."

Evidence of HMRC not raising concerns about Loan arrangements

72. In February / March 2019 during the Loan Charge APPG Inquiry, the APPG received impact statements confirming that some individuals had sought assurances from HMRC before using a loan scheme. One victim who had contracted at HMRC wrote,

"From 2013, through until 2017 I was using a method of re-imbursement which falls inside the remit of the loan charge being introduced imminently.

Prior to using this 'scheme' I contacted HMRC on three separate occasions to determine whether what was being proposed was legal. On each occasion members of HMRC assured me that the scheme was legal, subject to all necessary paperwork being submitted.

As a result of these assurances I signed up to the scheme and used it. In fact, I continued to use the scheme, whilst HMRC were an end-client of mine, naively believing HMRC's own assurances." [11]

[11] Impact Statement ref CL003 source: https://ln.sync.com/dl/c14ffd750#znqzvkch-jt6g4na2-s9qabqvp-4eidg7di

Evidence of HMRC confirming that the Loan Charge does not apply to all loan schemes

73. This correspondence from HMRC that was sent to a taxpayer in 2018 provides clear and documentary evidence that the 2011 legislation did NOT apply to ALL loan arrangements. The correspondence clearly shows that HMRC themselves confirm that employed arrangements that do not involve a third party were not caught by the 2011 legislation.

From: [redacted]@hmrc.gsi.gov.uk
To: [redacted]
Subject: [redacted]
Date: [redacted]
Attachments: [redacted]

Dear Mr [redacted]

Further to my email of [redacted] 2018 and in response to your email of [redacted] 2018.

I can confirm that loans between an employer and an employee where there is no third party involvement will not be caught by Part 7a ITEPA 2003 and subject to a loan charge. Loans between an employer and employee that are later assigned to a third party may still be caught by Part 7a ITEPA 2003 and subject to a loan charge.

[redacted].

Kind regards

[redacted]

HM Revenue & Customs

[redacted]
SO842
Howard House, 2nd
Floor.
Counter-Avoidance Promoters
Central Mail Unit
Newcastle NE98 1ZZ
Tel 03000 563038
Email [redacted]@hmrc.gsi.gov.uk

6. The Fundamental Error in the Morse Review

74. The Morse Review came to a very odd conclusion: that although it is wrong to remove basic statutory taxpayer protections and although this was unjustified before 2010, it was justifiable after this date.

75. Such a recommendation will leave at least 40,000 people and their families still facing a huge retrospective bill from HMRC for tax that has never been legally proven to be due and which many will be unable to pay. The rule of law has been undermined and this sets a very dangerous precedent of allowing HMRC to retrospectively tax people.

The law was not clear from December 2010

76. The Loan Charge APPG believes that the Morse Review's conclusion that the Loan Charge was not a fair or proportionate response to the use of payroll loan arrangements is correct, but that its recommendations do not go far enough to correct the problems arising and further review is required. Our reasons for this are as follows.

77. The Morse Review is fundamentally flawed in stating that the law become clear in December 2010. This is simply not the case. The event referred to by the Review was the addition of a new section (Part 7a) to the Income Tax (Earnings and Pensions) Act 2003. This was announced in December 2010, passing into law in mid-2011.

78. Part 7a only applies where there is an employer and an employee, and a third party makes payments (including loans) which are connected to the employment. Part 7a was silent about self-employed loan arrangements (i.e. contractor loan arrangements), loans to company directors and direct loans from an employer to an employee.

79. As well as not being clear, this tax legislation is too complex for ordinary people to understand and it is unfair to suggest they should have been able to fully comprehend it. These people looked to tax experts to interpret the 2011 legislation, who in turn told them that there were many types of arrangements that were not within the scope and that such arrangements could continue largely as before. These experts included registered members of chartered institutes who continued to advise clients to enter loan arrangements after December 2010.

80. The House of Lords Economic Affairs Committee heavily criticised the 2010 legislation in a June 2011 report, saying that it "…is extremely complex and beyond the scope of most businesspeople

to decide whether or not it applies to them. One witness called it 'the worst legislation he had ever seen'."

81. HMRC acknowledged this, albeit after a number of years had passed. In December 2016 HMRC issued a Technical Note entitled 'Tackling disguised remuneration' in which they clearly stated in Chapter 9, 'Self-employed DR schemes' that:

> *"…there are other DR schemes that do not currently fall within Part 7A but have the same objective. Typically these schemes involve individuals who are self-employed, either on their own account or as members of a partnership."*

In Chapter 3 of the same technical note HMRC announced that legislation would be brought forward to "strengthen" the 2011 legislation and to "put beyond doubt" that loans directly from an employer were in scope of this legislation. This shows that HMRC understood that these arrangements were not subject to the 2011 legislation. The note goes on to state that new legislation would be brought forward to tackle these arrangements and would take effect from 6 April 2017.

The courts did not rule in favour of HMRC until 2017

82. The Morse Report confirms that it was not until 2017 that the Courts ruled in favour of HMRC. In the Executive Summary on page 4 the Morse Report states,

> *"At the time of the 2011 legislation being enacted, the courts had not supported HMRC's view about the taxable nature of loan schemes. Indeed, the leading cases from the time had been consistently decided against HMRC's position."*

Paragraph 1.18 of the report on page 16 then goes on to say,

> *"1.18 HMRC's position at the time was also not supported in the courts. In 2002's Dextra Accessories v HMRC, the Special Commissioners found that the employee benefit trust (EBT) scheme under consideration achieved the "outcome promised when they were being marketed". While HMRC was eventually successful in appealing narrower arguments around corporation tax in the House of Lords the question around whether the loans were income was not considered further. It took until 2017 – subsequent to the announcement of the Loan Charge – for Dextra to be overruled by the Supreme Court, which concluded that it had been wrongly decided."*

83. The details of the relevant legal cases is as follows.

- Dextra Accessories Ltd v Macdonald (Inspector of Taxes) (2002) STC (SCD) 413 ('Dextra'): HMRC's interpretation that income tax should be applied in relation to payments of loans from EBT arrangements was deemed to be incorrect. The First Tier Tax Tribunal in Dextra held that loans achieved *"the outcome promised when they were being marketed*", to use

HMRC's own words. HMRC did not appeal the income tax on earnings aspect of that decision.

- Sempra Metals Ltd v Revenue and Customs Comrs (2008) STC (SCD) 1062 ('Sempra'): HMRC's interpretation that income tax should be applied in relation to payments of loans from EBT arrangements was again deemed incorrect. HMRC's PAYE arguments (that the loans were income) were again dismissed.

- Rangers v AG for Scotland (2017) UKSC 45 ('Rangers'): The FTT (October 2012) and Upper Tribunal (July 2014) both held that the loans were not a sham and could not be regarding as earnings. HMRC, having been advised to do so by a senior tax counsel, then changed their argument from whether the loans were taxable to argue (successfully) that there had been a payment of earnings when employers paid monies into the EBT. It was on this basis that the Supreme Court (in July 2017) decided in favour of HMRC and NOT on the basis that loans paid to individuals were taxable. The Rangers decision was thus that, in certain circumstances, the payment of a sum by an employer into an EBT may amount to a 'redirection' of the employee's earnings, in which case income tax should be deducted by the EMPLOYER under the PAYE system from the sums paid into the EBT before the 'loan' is advanced to the taxpayer. Following this decision, HMRC issued 'Follower Notices' to other employers that had implemented similar structures. No 'Follower Notices' were issued to individual taxpayers because HMRC had no legal basis on which to do so.

HMRC also failed to make clear that the schemes did not work

84. HMRC made no real attempt to advise ordinary taxpayers that any such payroll loan arrangements were deemed unacceptable and would be challenged. The Morse Report states this quite clearly showing that, even as late as 2015, HMRC's 'Spotlight' articles[12] were being read by only a few hundred people.

85. HMRC's lack of any action in the years 2010-2016 against such post-2010 arrangements shows that it was not clear to taxpayers that arrangements being entered into were considered by HMRC to be non-compliant with tax law[13]. Those taxpayers who entered into such arrangements, many

[12]Quote: ' HMRC's communications until 2014 continued to be aimed at tax professionals through the technical Spotlight articles'

[13] To emphasise this confusion, between July 2014 and January 2015 HMRC offered settlement to contractors under CLSO1. However, these offers only applied to pre-2011 schemes and did not make it clear that HMRC disapproved of schemes entered into after that date

on the basis of professional advice, did so believing they were compliant and within the law. HMRC have consistently refused to acknowledge this, adding to considerable pressure on taxpayers.

86. There is little evidence that HMRC has done anything to stop the marketing of such loan arrangements to this day, and promoters have walked away from this situation unscathed. There is no examination at all in the Morse Report regarding the failure of the legislative process (due to artificial time pressures) to properly scrutinise the Loan Charge legislation at the time when it was enacted, nor to conduct suitable impact assessments.

7. Experts who consulted to the Review did not consistently agree that the law was clear in 2010

87. This section considers whether the Morse Report[14] accurately reflects the views of the experts who gave evidence to the Review, specifically regarding the point of whether the law was clear after December 2010.

88. Sir Amyas Morse is an accountant by training and is not a tax expert. It is right that he sought out the advice of others to understand the legislative background leading up to the Loan Charge.

89. Under section B, chapter 4, the Morse Report suggests that "the position was clearer from December 2010 according to legal, expert and contemporaneous commentary". Paragraphs 4.10 and 4.11 start by referring more generically to 'loan schemes' thus inferring that the law was clear for ALL loans schemes after December 2010.

> *"4.10 As set out in Section A, there is a high level of consensus that 2010 marked a significant change in government rhetoric and action around loan schemes. While the position of loan schemes before 9th December 2010 is disputed,* ***the view of most tax advisers and professional bodies we heard from is that the 2011 legislation is effective in ensuring that income paid through loan schemes is subject to tax."***
>
> *"4.11 The evidence given to the Review was consistently that* ***once the new legislation was introduced, reputable advisers advised clients against using a loan scheme****. In short, their view was that, following the 2011 legislation,* ***schemes entered into on or after 9th December 2010 would clearly generate an income tax consequence****."*

Point 4.14 then contradicts the earlier paragraphs by concluding that the law was only clear for employer-employee loans paid through a third party.

> *"4.14 It is therefore the conclusion of the Review, as covered in Chapter 2, that* ***the effect of*** *the announcements and 2011 legislation was that* ***it became legally clear that a tax charge would arise on income paid to <u>employees through a third party</u> from 9th December 2010."***

90. Despite the existence of paragraph 4.14, which clearly and explicitly states that the law only became clear for <u>employer loans paid through a third party</u>, it is the more generic statements in paragraphs 4.10 and 4.11 that are pivotal in the report. Many of the conclusions and recommendations of the Morse Report rest on the statements in paragraphs 4.10 and 4.11 – in particular, the recommendation that the Loan Charge should apply (retrospectively) from 2010 onwards.

[14] Morse Report – see Appendix G

91. Paragraphs 4.10 and 4.11 also suggest that there is consistency in the views of the experts who gave evidence to the Review - that they consistently agreed that the law was clear and that [all] schemes entered into after 9th December 2010 would generate an income tax charge. However, these statements contradict the previous evidence that was provided by experts to the Loan Charge APPG, which was surprising. The APPG has therefore reached out to the experts that were consulted during the Morse Review to clarify their position on this point and also on the point of whether reputable advisers were advising people to use loan arrangements after the 2011 legislation was introduced.

Clarification sought from experts who were consulted in the Review

92. To clarify if the experts who were consulted during the Morse Review agreed that the law was clear in December 2010, in February 2020 the Loan Charge APPG wrote to those stakeholders who provided input to the Review to ask whether they agreed with the points in paragraph 4.11. The APPG is grateful to the experts who kindly took the time to respond and provide further details.

93. The following stakeholder groups were contacted by the Loan Charge APPG. These groups are listed in the Morse Report.

- Representative bodies (from Annex B of the report)
- Tax advisers and legal experts (from Annex B of the report)
- Independent tax and legal experts (from Annex C of the report)

94. The APPG asked the stakeholders for a response to the following question,

> *"the APPG wishes to understand whether you agree with the statement [in paragraph 4.11]. If you do not, please can you briefly expand and provide details of the types of "schemes" entered into on or after 9th December 2010 for which the 2011 legislation may not have clearly generated an income tax consequence."*

95. The parties were also specifically asked if they agreed with the statement that "reputable advisers advised clients against using a loan scheme" following the introduction of the 2011 legislation.

Feedback from experts on whether the law was clear in December 2010

96. The table below shows the feedback from the respondents in terms of whether they agree or disagree with the statement that ***"…schemes entered into on or after 9th December 2010 would clearly generate an income tax consequence".***

Stakeholder/Party Consulted		Response
Representative bodies (from Annex B of the Morse Report)		
1	Association of Independent Professionals and the Self- Employed (IPSE)	Did not comment
2	Association of Professional Staffing Companies (APSCo)	Did not comment
3	Chartered Institute of Taxation (CIOT)	Agree
4	TaxAid	Did not comment
Tax advisers and legal experts (from Annex B of the Morse Report)		
5	Gordon Berry - Business Oxygen Limited	Disagree
6	Keith Gordon - Temple Tax Chambers	Disagree
7	Matt Hall - Saleos Consultancy	Disagree
8	Phil Manley – PMTC	Disagree
9	Ray McCann - Joseph Hage Aaronson LLP	Agree
10	Chris O’Hara – Harts Accountants	Disagree
11	Graham Webber - WTT Consulting	Disagree
Independent tax and legal experts (from Annex C of the Morse Report)		
12	Heather Self	Partially agree
13	Graeme Nuttall OBE	Did not comment
14	David Goldberg QC	Did not reply to the APPG

97. Although there is some consistency in the feedback provided to the APPG, in contrast to the key findings of the Sir Amyas’ Review, the evidence overwhelmingly shows that most respondents disagree rather than agree with the statement above. Nine of the thirteen respondents provided a comment, and **six of the nine respondents who did provide a comment disagreed with this statement.**

98. **Only three of the nine respondents who provided a comment answered that they agreed with the Review that the law was clear that ALL loans were taxable after 2010.** However, when

asked to elaborate further, one respondent Heather Self confirmed that they did not have any detailed facts about the self-employed schemes and therefore they were unable to comment on those schemes. As her comment did not relate to self-employed schemes (which were widely promoted after December 2010) this response has been amended to 'partially agree' in the table above.

99. The two respondents who fully agreed wrote,

> *"…in short, I believe that the statement by Morse is a reasonable one based upon the facts. Those who take a different view will, I expect, either be individuals who believe the position is different and such behaviour was more widespread or, they have actually been involved in the promotion of these schemes. The difference between us may however in the end simply be a question of scale."*

> [referring to the 2011 legislation] *"…we would say that it represented another clear statement by the government that disguised remuneration schemes represented aggressive and unacceptable tax avoidance."*

100. However, most respondents disagreed with the statement in paragraph 4.11. The evidence provided to the APPG shows a continued legal ambiguity after December 2010. One respondent wrote,

> *"An Opinion… Post 2010, the legislation was complex, often vague, constantly developing in terms of interpretation and subject to often contrary public statements from HMRC, promoters and advisers, including often senior QCs who let it be known that their view differed from HMRC's."*

101. Respondents explained that the 2011 legislation only applied to employed schemes where the employer loans were made from a third party, leaving both loans from self-employed schemes and direct employer loans out of scope and unclear from a legal perspective. This evidence is consistent with paragraph 4.14 in the Morse Review which also confirms that the 2011 legislation only applied to employer loans paid via a third party, rather than the wider application stated in paragraphs 4.10 and 4.11 of the Morse Review.

One respondent wrote,

> "*For employed arrangements I accept that a majority of the tax profession will agree with this view. It must be stressed however that Part 7a ITEPA 2003 has obvious and explicit restrictions It applies only to the employed (and not the self-employed) and only to payments "via third parties". Payments made directly by the employer are not within its scope."*

Another respondent wrote,

> *"There can be no doubt whatsoever that the law DID NOT become clear in 2010. I state this as HMRC themselves are on record in 2016 stating that the legislation required*

updating to cover loans to self-employed."

Another respondent wrote,

"Unfortunately, the use of the expression "loan schemes" [in paragraph 4.11] is unhelpful because it implies wider application than the circumstances envisaged through the legislation."

102. Respondents raised the point that the Loan Charge would not be required if the law had been clear after the 2011 legislation was introduced.

One respondent wrote,

"Of course the most obvious and blatant example of why the law did not become clear in 2010 is by the introduction of the Loan Charge itself. There would be no need for such legislation in 2017 if the law in 2010 was suitable."

Another respondent wrote ,

"Here in lies the major contradiction in the Review's justification for maintenance of the loan charge for post 9 December 2010 loans. If the legislation is as clear…why would the former Chief Executive of HMRC, Sir John Thompson indicate that the loan charge was required to support HMRC's efforts to 'settle disguised remuneration cases without the need to litigate'." [15]

103. Finally, the point was also made that if the law had been clear then HMRC could simply have litigated and won, but evidence suggests that HMRC sought to prevent litigation. One expert explained,

"By far the easiest way to prove that [the legislation] is clear would be to allow litigation of a test case. A decision in favour of HMRC would have ended all challenges. Yet there is compelling evidence that HMRC repeatedly sought to prevent litigation. Surely if the legislation were clear then HMRC would not have stalled at underlying litigation and indeed it follows, if matters were clear, that no Counsel would have advised taxpayers to proceed, but this is not the case"

The Loan Charge APPG also took written and oral evidence from a Loan Charge victim who was coerced into settlement by HMRC to prevent them from continuing with the tribunal. This evidence is documented in section 10.

[15] Sir Jonathan Thompson, former CEO of HMRC, in a letter to Stephen Lloyd MP. Extract as per the "Loan Charge inquiry report", April 2019, page 35, Para 113: http://www.loanchargeappg.co.uk/wp-content/uploads/2019/05/Loan-Charge-Inquiry-Report-April-2019-FINAL.pdf

Feedback from experts on whether reputable advisers advised clients against using a loan scheme after December 2010

104. The table below shows the feedback from the respondents in terms of whether they agree or disagree with the statement that **"…reputable advisers advised clients against using a loan scheme"** following the introduction of the 2011 legislation.*".*

Stakeholder/Party Consulted		**Response**
Representative bodies (from Annex B of the Morse Report)		
1	Association of Independent Professionals and the Self- Employed (IPSE)	Didn't answer the question
2	Association of Professional Staffing Companies (APSCo)	Did not comment
3	Chartered Institute of Taxation (CIOT)	Didn't answer the question
4	TaxAid	Did not comment
Tax advisers and legal experts (from Annex B of the Morse Report)		
5	Gordon Berry - Business Oxygen Limited	Disagree
6	Keith Gordon - Temple Tax Chambers	Did not know
7	Matt Hall - Saleos Consultancy	Disagree
8	Phil Manley – PMTC	Disagree
9	Ray McCann - Joseph Hage Aaronson LLP	Mostly agree
10	Chris O'Hara – Harts Accountants	Disagree
11	Graham Webber - WTT Consulting	Partially disagree
Independent tax and legal experts (from Annex C of the Morse Report)		
12	Heather Self	Agree
13	Graeme Nuttall OBE	Did not comment
14	David Goldberg QC	Did not reply to the APPG

105. The feedback received by the APPG on this point was varied. Only six respondents directly answered the question with a clear ‘yes’, ‘no’ or ‘I don’t know’ response. The majority of respondents who did directly answer the question disagreed that all reputable advisers would have advised clients against using a loan scheme after December 2010. The different points covered in the feedback from the respondents are documented below.

106. Several respondents confirmed that “reputable advisers” (including the Big 4) were involved in offering or marketing these schemes. A selection of the responses is shown below.

One respondent wrote,

> *"It would be wrong to say that all firms who introduced their clients to these derivative schemes were non reputable. Indeed my experience suggests that reputable firms did introduce their clients but that they were perhaps more circumspect with regard to inherent risks.”*

Another respondent wrote,

> *“Nor is it safe to assume that only the disreputable or unqualified were involved in the promotion of post DR schemes (employed or self-employed). A number of leading tax barristers…created or opined upon post DR arrangements. I currently deal with several hundred self-employed clients caught by Sch. 12 FA (No. 2) 2017 that used arrangements devised by XXX - a top 20 firm of Chartered Accountants and tax advisers – after 9 December 2010.”*

107. Another respondent wrote,

> *“In my time at XXXXXX, a member of the big 4, I became aware that they themselves advertised loan schemes after 2010.”*`

108. The APPG believes that, had the legal position been clear from December 2010, then tax barristers (QCs) would not have designed or backed these structures and the Big 4 would not have advertised them.

109. The APPG also received feedback that mainstream advisers were involved in offering schemes,

> *“…the impetus for these schemes rarely came from mainstream tax advisers, it was generally a small group of advisory firms and specialised tax planning boutiques…responsible for thousands, perhaps tens of thousands, of individuals getting involved. Mainstream advisers did find themselves in situations where they were expected to “bless” tax schemes promoted by someone else. I expect that this continued after 2010…”*

110. Based on the above-mentioned feedback and other evidence received from Loan Charge victims, the APPG concludes that the ‘mainstream advisers” may include members of professional organisations such as ICAEW that could be considered to be a “reputable adviser”.

111. Mixed responses were received in relation to whether or not individuals sought tax advice from independent "reputable advisers" before using loan schemes. One respondent explained that cost may have been a factor in the decision to not seek independent advice,

> *"We have seen no instances in which an individual contractor, contemplating a scheme, or an owner of a small/family business contemplating an EBT, sought the advice of a Big 4 accounting firm or magic circle law firm. We suggest that the cost to such an individual would have seemed prohibitive"*

Another respondent confirmed that the Big 4 were advising on schemes,

> *"My evidence is that taxpayers across the UK with advisers, ranging from Big Four down to sole practitioners took advantage of structures involving loans in one form or other. It is acknowledged that the Big 4 made a strategic withdrawal from designing and implementing structures after pressure from the government. It's not clear in the report what evidence, other than anecdotal that, 'reputable advisers advised against using a loan scheme'."*

112. Based on feedback from the respondents and other evidence from Loan Charge victims, the APPG believes that the main reason many users of loan schemes would not have sought independent advice is because they thought they were already being advised by "reputable advisers" and therefore did not require it.

113. The feedback from the respondents highlights that the use of the term "reputable adviser" means different things to different people. One respondent suggests that the use of the term "reputable adviser" in the Morse Review is misleading. They wrote,

> *"…It risks making the rest of the statement self-fulfilling. If "reputable" means the type of adviser that would have discouraged or strongly discouraged individuals from participating then, of course, such advisers would have advised clients against using loan schemes and the statement will automatically be correct."*

114. Most respondents acknowledged that some advisers who offered the loan schemes were members of professional organisations. Members of these organisations might be assumed to be "reputable". One respondent wrote,

> *"Is it the case that the advisers to whom individuals were referred by promoters – many of whom are still trading – can be deemed to be 'reputable advisers'?*
>
> *You would hope that those who belonged to professional organisations (ICAEW, CIOT, ACCA) would have been objective. There is sadly little evidence of this."*

Another respondent wrote,

> *"… If someone was considered to be disreputable and was a member of the bar, the Law Society, ICAEW, ICAS, ACCA or CIOT, one would have expected them to be disciplined."*

The APPG has received no evidence or feedback to suggest that any adviser has been disciplined by their professional or governing body.

115. Only one respondent agreed with the statement in para 4.11 of the Morse Review. They state,

> *"In my view an adviser who recommended such a scheme or the more exotic variants after December 2010 cannot be described as 'reputable'."*

However, they then go on to say,

> *"Equally, however, I have witnessed professionally qualified advisers attempting to market loan schemes most often on the basis that they were "worth a punt".*

If one assumes that professionally qualified advisers are "reputable" then this statement also supports the feedback of other respondents, that "reputable advisers" were marketing the loan schemes after 2010.

Other feedback points received from the respondents

116. Respondents highlighted that some accounting firms were linked ("attached") to promoters resulting in conflicts of interest to agree with the scheme promoters' view, but that in doing so they were potentially breaching their professional obligations. If they had been members of aforementioned professional bodies, that may also suggest wider failings of these organisations themselves, highlighting a greater need to regulating both the individual tax professionals, firms and the (self-regulatory) organisations that represent them.

117. One respondent concluded by opining that all parties could be held culpable to a degree:

> *"The accounting/tax profession did not make publicly available its views nor circulate its members with the need to do "the situation is much more complex than you might think.*
>
> *There was a coming together of circumstances in which all parties could be held culpable to a degree.*
>
> *HMRC was far from clear about their view and failed to bring any litigation within what could be described as a reasonable time. (HMRC failure)*
>
> *The promoters held themselves out to be tax experts and agents of the scheme users, often being neither. (Failure of Gov't to regulate)*
>
> *Accounting firms "attached" to promoters were under pressure/conflict to agree with the promoter view, breaching, in my opinion, their professional obligation. (Failure of the professional bodies)*
>
> *The accounting/tax profession did not make publicly available its views nor circulate its members with the need to do risk warnings. (Failure of professions to protect the public)*
>
> *Contractors did not seek an independent opinion. (Failure to take control)"*

118. In addition, respondents suggested that the tax profession and accounting bodies did not make their views publicly available nor encourage their members for the need to mitigate the risk of schemes to individual users. So, if they did know and did not act accordingly, this would represent a whole-sale failure of the professional bodies to protect the general public.

A review of other evidence referred to in the Morse Report

119. The APPG has reviewed other sections of the Morse Report to identify other evidence that may justify the key conclusion of the Review, that all loan schemes entered into on or after 9th December 2010 would clearly generate an income tax consequence. Paragraphs 2.6 to 2.11 of the Morse Report provide further detail on the evidence sought by the Review and on which this conclusion was based. These paragraphs exist under the sub header '2010 marked a significant increase in action against loan schemes'.

120. The APPG finds that some paragraphs in this sub section are confusing and perhaps unintentionally misleading. One expert commented that "*within this section there is a lack of precision.*" This lack of precision might explain how Sir Amyas Morse reached the unexpected conclusion that the law was clear that all loan schemes were taxable after December 2010, despite the fact that the vast majority of evidence from experts state that the scope of the 2011 legislation was limited to employee-employer loans received from a third party.

121. Paragraph 2.6 starts by confirming that the law is clear for loans to employees from third parties.

> *"2.6 …In 2011, new legislation was inserted into the Income Tax (Earnings and Pensions) Act 2003. This new section is often referred to as Part 7A.*
>
> *It charged income tax and NICs on the full value of a loan made to an employee (or related party) from a third party, such as a trust."*

122. Paragraph 2.7 then starts to introduce some ambiguity by using the generic term 'loan schemes' interchangeably with the more specific term 'schemes using third parties'.

> *"2.7 Expert commentary at the time sets out that, while the legislation was not perfectly drafted, it was understood as ensuring that income provided to employees through schemes using third parties, **such as loan schemes**, was subject to income tax and NICs."*

One expert who provided evidence to the APPG explained that,

> "*Employment income provided to employees through third parties and "loan schemes" cannot be considered interchangeable because the 'latter' capture all description covers a multitude of situations, many of which may not fall into the 'former' category."*

123. Paragraph 2.8 also creates some ambiguity, by not explicitly stating that the document from which the quotes are sourced refers to employees and related parties, it does not refer to the self-employed.

> *"2.8 Professional advisers discussing the legislation concluded that it was taking 'a double-barrelled approach of very general provisions' alongside 'quite specific provisions to target certain schemes in existence'*…"

The footnote on the paragraph references a document called 'Disguised Remuneration: ITEPA part 7a an introduction'. The document is written by tax barrister Harriet Brown of Old Square Tax Chambers. The quotes in the paragraph above are directly sourced from this report, they do not appear to be direct quotes from discussions with professional advisers.

The document discusses the draft legislation and the uncertainty caused by the numerous changes that were made as the bill passed through parliament. It makes reference to a change in the way the legislative process was being carried out and it makes numerous references to the legislation not being clear and causing confusion to those trying to interpret it.

Regarding the quotes in paragraph 2.8 it is helpful to read those quotes in the context of the full paragraphs. These paragraphs suggest that even within the context of the 'employee' and related parties, which are described in the document, the legislation was unclear.

> *"9.1. The new statutory language has provided much consternation, especially for lawyers. Generally, a law which fails to be clear, and to define the scope of its application accurately and with the minimum of ambiguity (obviously ambiguity cannot be eliminated altogether), can be considered a "bad" law. People should not be expected to comply with that which is not susceptible to comprehension or to reasonably certain interpretation. The use of wishy-washy phrases such as "in essence", "covers or relates" and "for example", leaves many people in doubt about the proper application of the law, and whether or not they are caught."*

> *"9.2. HMRC's answer of more comprehensive guidance is not really a solution, because at base it is the courts' interpretation of the provisions, and not HMRC's, which is important. This cannot at present be predicted with any certainty because of the impreciseness of the language. The provisions seem to take a double-barreled approach of very general provisions to catch everything they might want to catch with quite specific provisions to target certain schemes in existence. This potentially gives taxpayers the worst of both worlds."*

> *"9.3. In the HMRC Article it is said: HMRC recognized that a piece of legislation as wide ranging as Part 7A was likely to generate comment and debate … HMRC will continue to engage with advisers to understand any ongoing areas of concern, and will add to or revise the guidance as necessary to give as much clarity as possible…*
>
> *As stated above, this is hardly a substitute for properly drafted well-thought out legislation which can be applied with a degree of certainty"*

124. Paragraph 2.9 of the Morse Review covers evidence from two sources, a PriceWaterhouseCoopers (PWC) report which is freely available online and guidance published by LexisNexis which is not in the public domain. Again, although it is not explicit in the first quote from PWC, both of these quotes relate to employment income and do not refer to self employed schemes.

> *"2.9 PricewaterhouseCoopers noted that, 'PAYE and NICs will be due when a third party lends money from 9th December unless it falls within one of the very limited exemptions'.*
>
> *Guidance published by LexisNexis was similarly clear about the purpose of the legislation, 'the disguised remuneration (DR) legislation introduced in the Finance Act 2011 was a warning to employers and promoters of tax avoidance schemes that the use of EBTs and other contrived remuneration structures to avoid, defer or reduce income tax liabilities would be strongly challenged.' "*

125. Paragraph 2.10 is another example of ambiguity being introduced through use of the generic term "loan schemes" instead of specifying that the legislation applied to <u>employee loans from a third party</u>. As mentioned in the previous sub section, this response does not correlate to the feedback given to the APPG by the majority of experts who were consulted during the Morse Review.

> *"2.10 The evidence provided to the Review by tax experts considered the 2011 legislation to be a 'dramatic change' in the law covering loan schemes and that there was a clear distinction between the arrangements put in place before and after its introduction.* ***It was commonly referred to as 'keep off the grass' legislation, meaning it is wide in scope to ensure that the government's intention is clear and can be used to challenge a number of variants****."*

126. Finally, paragraph 2.11 of the Morse Review appears to bring in the point of morality of the schemes ,

> *"2.11 The 2011 legislation had a significant impact on the nature of loan schemes, with loan schemes of the type that existed prior to the legislation no longer delivering tax benefits.* ***This led to loan schemes becoming increasingly contrived to seek to get around the requirements of the 2011 legislation.****"*

The APPG has received evidence from both victims and experts that confirms the schemes did evolve when the 2011 legislation was enacted. One expert wrote,

> *"What I believe would have happened in 2011 is that the new legislation would have reassured…advisers that the schemes previously worked (otherwise why bring in dozens of pages of very complicated legislation) but would no longer be operative. However, as the new rules were expressly limited to individuals who were in an employment relationship, the principles would mean that the previous schemes would continue to work for those who were self-employed."*

It is clear from the other evidence above, that the schemes could evolve because the law was not clear with regard to the tax position of all loan schemes after 9th December 2010.

8. Issues Not Dealt with by the Morse Review

The new Loan Charge terms offer no certainty or closure to taxpayers

127. **Pre 2010**: although recipients of loans prior to December 2010 are no longer subject to the Loan Charge, there is a sinister reference in Para 2.13, Page 6 of the Government Response to the Loan Charge Review published in December 2019 by HMRC. This paragraph states:

> *"The Government will also invest in a new HMRC team to conclude enquiries and bring in tax due from people who in the past have used DR schemes and other forms of tax avoidance. The team will engage positively with those who wish to settle their affairs and will have the resources and skills to pursue cases to tribunal and through the courts where that is necessary to collect what is due. This will ensure people who entered into DR avoidance schemes before 9 December 2010 still pay the tax due and make their contribution to funding public services. Further detail will be announced at the Budget."*

This statement is greatly concerning: if there was relevant legislation which allowed such collection to take place, then why has it not been used in the past? It appears to be yet another attempt to apply pressure to extract tax where none has been proven to be due.

128. **Post 2010**: the Loan Charge still remains in force for most users of schemes between 2010 and 2016. However, payment of the Loan Charge does not close the outstanding requirements which means that the taxpayer affected might find themselves being pursued for further monies in the future.

129. The Morse Report also makes no recommendations to improve the unfair settlement terms, which remain entirely at the discretion of HMRC. If settlements were at all fair and reasonable (and affordable) then many more people would have chosen to accept them and gain closure from the Loan Charge nightmare. In the panel evidence session on 20th January 2020 tax experts discussed this omission of the Morse Review, and they suggested a number of ways in which the settlement terms could be revised to enable taxpayers and HMRC to draw a line under matters. This evidence is documented in section 5 of this report under sub header 'Review recommendations – failure to address the overly punitive settlement terms'.

Failure to tackle the ongoing promotion of Loan Schemes

130. Despite a number of misleading statements made by HMRC and the Treasury (see below) to date there has been no real attempt or proposal on how to pursue the promoters of the Loan Schemes which are now subject to the Loan Charge or outstanding enquiries.

131. A strong point was made by the panel of experts who gave evidence to the Review on 20th January 2020, that the whole approach of the Loan Charge and HMRC has been far too focused on covering up past failures to halt the proliferation of these schemes and it is not properly focused on stopping them going forwards.

132. The experts raised the point that loans received after 5th April 2019 are NOT subject to the Loan Charge. As well as being an unfair way to deal with past cases, this has not stopped the promotion of new schemes going forward. HMRC have admitted that thousands of people are still being sold similar schemes today.

133. The experts discussed that one of the policy goals of the Loan Charge is to stop the future use of these arrangements and it has clearly failed to do so. It is designed to cover up HMRC's failure to progress enquiries into taxpayers' affairs and HMRC's failure to open enquiries on some parties whom the courts have ruled were in fact liable under the law in force at the time. Lack of HMRC resources is one cause and is a reason why HMRC have been fighting a losing battle for a long time.

134. The need for better regulation of both 'umbrella companies' and tax advisers was also highlighted by the experts. They said that building upon the Managed Service Company legislation to make promoters/organisers of the arrangements personally liable for any tax underpaid could be a possible way to shut down this industry by changing the risk profile. Concern was raised that the promoters are offshore, but this did not tally with the experts' recent experience.

Failure to properly consider small and medium sized businesses

135. The revised Loan Charge Guidance published by HMRC focuses solely on the individual and does not provide any real guidance for SMBs. This is seriously problematic for this group of people, as it is as yet unclear if they will be subject to any of the announced changes to the Loan Charge. This raises the following concerns:

136. **Disclosure:** the draft Loan Charge legislation only covers disclosures made on personal tax returns. However, this is not how some small businesses declared such loans. They did so in different ways and using recognised processes. It would make more sense if the legislation were drafted on the basis of whether or not the use of loans was declared, regardless of whether this was by a business or an individual.

137. **Enquiries:** the draft legislation is surprisingly quiet with regards to what constitutes HMRC 'taking action'. There is no clarity in the cases where enquiries were made on the company rather than the individual and whether those years would be included in the Loan Charge. Further

guidance is required for businesses and the burden of proof should lie with HMRC to demonstrate that they have acted as required within the statutory timelines.

138. **Double taxation:** Where a company has been dissolved, the tax liability has been discharged. It is unclear how the Loan Charge legislation can attempt to transfer such a crystallised Loan Charge liability to another person, such as a former Director, as this constitutes double taxation – once on the company and a second time on the former Director.

Failure to consider the situation of loans being recalled after 5th April 2019

139. The APPG heard from both experts and victims in the panel evidence sessions held on 20th January and 4th February 2020 (see section 5).

140. Experts highlighted that some parties have sought repayment of the loans from the taxpayers. In these cases, third parties claim to have acquired the loans from the trusts or employers and are seeking payments of between 5%-10% of the gross loan value in return for a document stating that no further liability exists. One expert stated that they had been involved in defending clients for three specific arrangements where this had occurred. One expert called the overall situation "an unbelievable mess". APPG members expressed shock and one described this as a "deliberate scam".

141. One victim gave evidence that they are still facing the Loan Charge as they were advised into the schemes by their ACCA registered accountant after March 2010. The accountant had been getting a kick back for referring them onto the scheme. The victim was out of time to take the accountants to court for mis-selling. They explained that they had suffered a long delay in obtaining settlement figures and that they only got their figures when their MP got involved. They are now being pursued by a third party company to repay their loans.

142. HMRC and the Treasury continue to ignore this issue. It should be highlighted that repaying loans at this point does not remove the requirement to pay the Loan Charge, even if it does demonstrate that the loans may have genuine legal substance. The Loan Charge is calculated based on the outstanding loan balance as at 5th April 2019, therefore repaying loans after this date would mean having to pay back the loan and pay the tax.

143. A simple but fundamental principle must be built into the legislation which is that people cannot be forced to repay a loan and still have to additionally pay the Loan Charge (or any other taxes based on the false assumption that these loans are non-repayable or are loans in name only).

144. A principle must also be enforced whereby if a taxpayer has settled with HMRC, on the basis that loans are considered to be income for tax purposes, then it should not be possible for the owner of the loan book to recall those loans or to force people to pay significant fees to release them from their obligation to repay the loans.

145. One expert suggested a possible solution would be to enact a law that recognised the double jeopardy of the taxpayers/borrowers here and disapplied contract law and all its processes for recovering debt where the "same" money was subject to taxation.

Failure to consider public sector workers joining schemes after 2017 due to IR35

146. The Loan Charge APPG Inquiry Report[16] published in April 2019 found that,

> *"evidence suggests that substantial numbers of people, including public sector workers, did not know or understand the details of the arrangements, or that they involved loan payments – but were assured by advisers and third parties that the arrangements were entirely legal."*

147. The Morse Review recognised that,

> *"9.1…despite the Loan Charge, schemes continue to be used in significant numbers. There were more first-time users in 2017-18 (over 6,000) than in any earlier year, and there were still approximately 3,000 first time users in the first half of the 2019-20 tax year."*

However, the Morse Report did not consider or did not provide an explanation for the increase.

148. The increase in new users of loan arrangements stems from the implementation of reforms to the Off-Payroll Working Rules, also known as IR35, to the public sector in 2017. This change resulted in many public sector workers such as doctors, nurses, social workers, teachers and Government staff switching from using Personal Service Companies (PSCs) to using loan arrangements.

149. Like others who used loan arrangements before 2017, this group of users would have started using Loan arrangements because were advised to use them. Many were unaware of the Loan Charge or that the Government considers that the arrangements 'don't work'. It is likely that many public sector workers would fall into the lower income bandings quoted in the Morse Report.

150. The Morse Review has said nothing about this group of people who are now facing an awful situation. The Loan Charge may still apply to loans received during or after the 2016-17 tax year. The recommendations offer no solution to these public sector workers who used loan arrangements after 2017.

[16] Loan Charge APPG Inquiry Report April 2019 – see Appendix A1

151. We believe that this group of people need a way out of the situation they are in, having clearly been mis-sold the arrangements. This should enable them to legally pursue the promoters who sold the arrangements, and it should also allow access to a lower percentage settlement opportunity for years that are under enquiry by HMRC or for years that are subject to the Loan Charge.

HMRC disinformation regarding tackling ongoing promotion of schemes

152. The APPG has issued another report (see Appendix E1) which goes into detail about the consistent and concerted campaign of disinformation by HMRC and the Treasury to give the false impression that HMRC have taken action against those who promoted the schemes which are now subject to the controversial Loan Charge. This includes the following topics:

- Use of press releases with misleading headlines and phrases,
- Misleading ministerial answers to parliamentary questions,
- Repeated referrals to arrests of "promoters" when asked about the Loan Charge when such arrests are in fact unrelated to the promotion of schemes which are subject to the Loan Charge.

9. The current situation and other issues

The ongoing risk of further suicides

153. The APPG remains concerned about the ongoing risk of suicide. To date seven suicides of people facing the Loan Charge have been reported to the APPG. The APPG continues to receive regular reports from individuals reporting that they themselves are suicidal or that people are fearful for the health of specific individuals. The APPG would like to pay tribute to the unpaid volunteers of the Loan Charge Action Group helpline who provide free support for people who feel that they cannot cope.

154. A volunteer from the LCAG helpline informed the APPG that the total number of distress calls to the helpline had risen from 193 calls at the end of October to 282 calls as at 9th March 2020.

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
Nov-19	18
Dec-19	17
Jan-20	13
Feb-20	28
Mar-20	13
Total	**282**

These calls include those made directly by ‘at risk’ individuals or referral calls where a person contacted the helpline to request support for an ‘at risk’ individual. It is estimated that this number may be as high as c. 560 if the statistics are adjusted to include follow up calls, interventions to ‘cries for help’ on Twitter and emails.

155. The volunteer from the LCAG helpline also confirmed that as at 9th March 2020 the number of ‘at risk’ individuals who they are actively monitoring has risen to **seventeen,** compared to **thirteen** at the end of October 2019.

156. The APPG acknowledges that HMRC has taken steps in the recently published guidance notes[17] to mention

> *“…there is anything about your health or personal circumstances that may make it difficult for you to deal with us, please let us know so that we can help you in the most appropriate way”.*

However, the email address and telephone number provided are simply the details for the Loan Charge helpline, which is only staffed during UK hours from 8:30 a.m. to 4.30 p.m.

157. The APPG remains extremely concerned at the ever-increasing number of calls being reported by the Loan Charge Action Group helpline. It is assumed that the situation with the Loan Charge may continue for at least another six months. **Therefore, there is still a 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.**

Loan Charge review documentation is extensive, complex and may not be fully understood by the taxpayer

158. The APPG is aware of eleven documents that have been published on or after 20th December 2019 following the Morse Review.

	Published (P) / Updated (U)	**Document Name**
1	20-12-2019 (P)	Independent Loan Charge Review: report on the policy and its implementation *[76 pages]* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf

[17] HMRC Guidance Notes – see Appendix I, document 1

2	20-12-2019 (P)	HMT Independent Loan Charge Review: Government response to the Review *[14 pages]* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854490/20191219_Government_respo
3	20-12-2019 (P) 20-01-2020 (U) 06-03-2020 (U)	HMRC/HMT Guidance: Disguised Remuneration: guidance following the outcome of the independent loan charge review *[c. 18 pages*]* https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review/guidance
4	20-01-2020 (P) 27-02-2020 (U)	HMRC Guidance: Find out how the changes to the loan charge affect you *[c. 4 pages*]* https://www.gov.uk/guidance/find-out-how-the-changes-to-the-loan-charge-affect-you
5	20-01-2020 (P)	Draft legislation – Loan Charge *[11 pages]* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859057/Draft_legislation_-_loan_charge.pdf
6	20-01-2020 (P)	Explanatory Note v3 – Finance Bill Clauses 1-5 Schedule 1 *[5 pages]* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859163/Explanatory_Note_v3.pdf
7a	20-01-2020 (P) 27-02-2020 (U)	Policy Paper: Implementing changes to the Loan Charge *[c. 6 pages*]* https://www.gov.uk/government/publications/implementation-of-changes-to-the-loan-charge/implementation-of-changes-to-the-loan-charge
7b	11-03-2020 (P)	Policy paper - Implementation of recommendations from the independent review of the Loan Charge *[c. 8 pages]* https://www.gov.uk/government/publications/implementation-of-recommendations-from-the-independent-review-of-the-loan-charge/implementation-of-recommendations-from-the-independent-review-of-the-loan-charge *(despite having a different title, this document appears to contain the same content as document 7a and hence is listed as 7b instead of as a new document)*
Documents relating to refunding voluntary restitution where the taxpayer is no longer impacted by the Loan Charge following the new terms resulting from the Loan Charge review		

8	27-02-2020 (P)	Draft legislation – refunding voluntary restitution https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868920/Draft_legislation_refunding_voluntary_restitution.pdf
9	27-02-2020 (P)	Draft scheme – refunding voluntary restitution *[15 pages]* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868925/Draft_scheme_refunding_voluntary_restitution.pdf
10	27-02-2020 (P)	Explanatory note – refunding voluntary restitution *[4 pages]* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868924/Explanatory_Note_refunding_voluntary_restitution.pdf
11	27-02-2020 (P)	Policy Paper: Implementing changes to the Loan Charge – refunding voluntary restitution https://www.gov.uk/government/publications/implementation-of-changes-to-the-loan-charge/implementation-of-changes-to-the-loan-charge-repaying-certain-voluntary-payments

**number of pages is estimated where the document is only available as a web page on the Gov.UK website and where no downloadable version of the document exists. The text from the page has been copied into a Word document in font size 10.*

159. A member of the Loan Charge APPG Secretariat has read the documents above, comprising of well over 150 pages. In the three months since the Morse Review was published many of the documents have evolved / been updated which creates a seemingly impossible situation for an ordinary taxpayer to manage to stay abreast of how their unique circumstances will be treated under the announced concessions or what processes they need to follow.

160. The HMRC guidance directs the taxpayer to read the draft legislation.

> *"Look carefully at the changes to the loan charge rules and whether they have an impact on your loan charge liability. You should refer to draft legislation and further guidance which has now been published."*

The draft legislation mostly amends the original Loan Charge legislation, which in turn references the 2011 legislation, which has been described by experts as impenetrable for a lay person. It is impossible for an ordinary taxpayer to understand this highly complex tax law.

161. Depending on their circumstances, a taxpayer may have no choice but to engage the services of a tax professional to understand how they are impacted by the amendments to the Loan Charge. Those who cannot afford to do so will be flying blind. However, we can also understand why taxpayers may feel very wary of, and possibly even loathed to, engage more costly tax professionals

for advice when following past advice has led to HMRC opening tax enquiries and eventually the Loan Charge.

162. Making the Loan Charge prospective from 2017 may bring an additional benefit of simplifying the legislation and the guidance. It would at least remove the complexity resulting from the criteria applied to loans received between December 2010 and April 2016 in respect of 'reasonable disclosure'.

Definition of 'reasonable disclosure' is onerous and provides little relief

163. The extent of disclosures made on tax returns is one of the criteria used to determine if payroll loans will be exempted from the Loan Charge.

164. The Morse Review recommended that between December 2010 and April 2016:

> *"taxpayers who made <u>reasonable disclosure</u> of their scheme usage, but for whom the year is unprotected should not have that unprotected year included in the scope of the Loan Charge".*

The Morse Review described reasonable disclosure as,

> "4.28 *For these purposes, a "reasonable disclosure" should be considered as not requiring the submission of a Scheme Reference Number (where a scheme was registered under DOTAS), but build upon HMRC's ordinary compliance approach in considering the extent to which a Self Assessment Return is sufficiently clear about the usage of a loan scheme."*

165. The legislation under Section 11 specifies that,

5. For the purposes of sub-paragraph (1)(b) a tax return contains a reasonable disclosure of the loan or quasi-loan if—
   a. it identifies the loan or quasi-loan,
   b. it identifies the person to whom the loan or quasi-loan was made in a case where the loan or quasi-loan was made to a person other than A,
   c. it identifies the relevant arrangements in pursuance of which or in connection with which the loan or quasi-loan was made, and
   d. it contains such other information as is sufficient for it to be apparent that a reasonable case could be made that for the relevant year A is chargeable to income tax on an amount that was referable to the loan or quasi-loan.
6. The condition in sub-paragraph (1)(b) is to be taken to be met if a single tax return made by A for a qualifying tax year does not meet the requirements sub-paragraph (5) but two or more tax returns made by A for qualifying tax years, when taken together, do meet those requirements.

Similar disclosure requirements are proposed under Section 12.

166. The latest set of guidance notes published by HMRC on 6th March 2020 expands on the definition of 'reasonable disclosure' as follows,

"For the purposes of the loan charge, HMRC will consider that a reasonable disclosure of a disguised remuneration tax avoidance scheme was made if you provided sufficient information in your return or accompanying documents to enable HMRC to identify the loan scheme and specifically the person to whom the loan was made and the loan arrangement. For example, if the avoidance scheme promoter had provided the scheme user with a disclosure of tax avoidance scheme (DOTAS) number, it is reasonable for you to have enclosed this number on your return. Alternatively, where the loan scheme was not disclosed to HMRC (and there was no DOTAS number) it would be reasonable for you to refer to your loan arrangement elsewhere on your return.

The disclosure must have contained sufficient information so that it was apparent that a tax liability may have arisen as a result of the loan arrangement. Where the nature of the loan arrangement was such that only by considering its implications over more than one year could it have become apparent that a tax liability arose, the disclosure will be considered reasonable if sufficient information was provided when considering all relevant returns together."

167. The APPG has received documentary evidence from a Company Director who made disclosures on their Company accounts and also on their personal tax return for years when they used a loan scheme. On one year they disclosed the Scheme Reference Number (SRN) in the white space on the tax return, but were told "The disclosure does identify the DOTAS Scheme Reference Number for the EFRBS scheme but does not detail the loan or quasi-loan from the EFRBS" therefore the Loan Charge still applies.

168. The disclosure requirements appear to be very extensive and to require multiple pieces of information to be included on tax returns. The wording, set by HMRC and the Treasury, is very precise and likely goes significantly beyond what a taxpayer was required by law to disclose at the time of submitting their tax return. The taxpayer is entitled to rely on what the law required them to do at the time and having taken professional advice to understand the requirements. For the taxpayer to now be held to a higher standard in what they should have disclosed is certainly not reasonable.

169. It is likely that very few taxpayers, even having followed the most conservative interpretation of the requirements to disclose at the time of filing their tax returns, would have met these requirements and would now potentially qualify for this concession. This would appear to be by design.

170. The APPG believes that if a person has failed to meet their statutory requirements and HMRC is able to show this, then HMRC should seek to open an enquiry using their pre-existing powers and subject to the ordinary safeguards. In short, there is no need for all this complexity. If a year is still available to HMRC opening an enquiry, then they should do so.

HMRC conduct

171. The APPG received more evidence on this topic from both victims and experts in the panel evidence sessions held on 20th January and 4th February 2020, and also sent directly to the APPG inbox.

172. **Inappropriate timing of correspondence:** The victims spoke about correspondence often arriving at inappropriate times that seem to cause maximum distress. For example, it is common for correspondence to routinely arrive on a Friday, before a bank holiday or at a time when there is a time lag until they can speak to someone at HMRC. This causes unnecessary worry. The APPG has also received other examples of correspondence arriving at inappropriate times in the APPG inbox. Examples include correspondence that was sent in error arriving on Christmas Eve which "nearly cost the person their marriage", bankruptcy warning letters being sent in the week after Christmas, and settlement calculations arriving just before Christmas. The APPG has also received examples of APNs and APN late payment penalty notices being received on Friday's and just before Christmas.

173. **Coercive behaviour by HMRC:** One victim who attended the panel evidence session and who was a former lead case for a tax tribunal for a loan scheme, sent separate documentary evidence to the APPG showing that much of their correspondence from HMRC had arrived on Fridays or Saturdays. The correspondence also shows how HMRC coerced the lead cases into settlement, by first issuing them with closure notices based on the gross loan amounts (i.e. taxing not just the loans but also the fees taken by the promoter) and then offering them a 'settlement opportunity' based on the actual net loan amount that they received. The correspondence shows that HMRC gave the lead case just 30 days to make a decision on settlement or face being pursued for tax on the gross loan amounts. This correspondence started in late November 2017 and continued into December. The victim received a letter dated 20th December 2017 on this same topic and the letter concluded by saying that the inspector would be on holiday from 21st December until 2nd January thereby leaving the victim without a point of contact over the Christmas period.

174. **Delays and punitive rates of interest:** The tax experts gave examples of HMRC taking 18-24 months to respond to correspondence, during which time HMRC continue to add interest to their claimed tax liability.

175. **Withholding repayments:** The tax experts related experiences where HMRC has withheld repayments without proper justification except for citing ongoing enquiries.

176. **APN enforcement:** They also described instances of the Accelerated Payment Notices team continuing to chase individuals and demanding full payment in 30 days despite the individuals

having already settled the underlying tax dispute. These indicate a failure of different HMRC departments to communicate with each other.

10 Conclusion

Key findings

177. The key findings of the Loan Charge APPG in respect of the recommendations of the Morse Review and the impact to taxpayers are documented in the following paragraphs.

178. The Terms of Reference of the Morse Review were limited and involved far too much input from HMRC and the Treasury to be considered independent. Key point of concerns included:

- HMRC/HMT staffing the Review body and how this negates any claim of independence
- The ability of the Director of Personal Taxation, HMT, to influence the Review
- The strong suggestion that HMRC and the Treasury would see early drafts
- Scope – which was narrowly defined and omitted key aspects
- Timeframe – which was unnecessarily short and limited the thoroughness of the Review

179. The Morse Review is flawed in concluding that the law was clear from December 2010 in respect of the tax position of loan arrangements that were marketed after this date

- The 2011 legislation only applied to 'employed' (employee-employer) arrangements, where a loan was provided to an employee from a third party, it did not cover self-employed arrangements or employed arrangements where no third party is involved.
- After December 2010, promoters of loan arrangements modified their offering to remain compliant with the legislation.
- The law only became clear in 2016 / 2017 for many arrangements.

180. After 2010 taxpayers were given assurances by reputable advisers and even, to some extent, by HMRC with regard to their use of the schemes

- Many taxpayers were still advised into the arrangements by chartered accountants.
- Big 4 accountancy firms promoted arrangements; QCs also continued to back them.
- Some people contacted HMRC to seek assurances before using the loan arrangements.

181. The new Loan Charge terms are disproportionate and unfair to those that are still facing it

- The Morse Review found that the Loan Charge overrides statutory time limits and that taxpayers are entitled to rely on the prevailing law as interpreted by the Courts; however under the Morse Review recommendations, the Loan Charge still overrides the statutory time limits which parliament enacted to give the taxpayer certainty once HMRC have accepted their tax returns; and

- The retention of a retrospective Loan Charge going back to December 2010 still denies those impacted access to the legal system to decide the underlying tax issues – to date no tax tribunal or court has ruled on these cases.

182. The recommendations in respect of closed (unprotected) years do not go far enough

- HMRC/the Treasury have put in place onerous restrictions on closed (unprotected) years being removed from the Loan Charge with respect to disclosures required on tax returns – which are far in excess of what the law required people to do at the time and, in some cases, far beyond what they were capable of doing.

183. The new Loan Charge terms have had some negative and unintended consequences

- Some people who settled or repaid loans before the Review was published are put at a considerable financial disadvantage to those who waited – under the current proposed legislation they won't be compensated.
- For loans received before December 2010 the terms effectively penalise those who disclosed more information to HMRC over those who disclosed less. Those who disclosed less may have no open enquiries and therefore will pay less than those who do.

184. The recommendations of the Review do nothing to close the situation for taxpayers on open tax years pre or post December 2010

- Paying the Loan Charge does not close outstanding enquiries / assessments.
- Voluntary settlement brings closure, but the terms are punitive and unaffordable to many.
- More affordable Time-To-Pay plans were considered but no recommendations were made in respect of the settlement terms and settlement contract wording.
- Fairer more affordable settlement terms may increase the number of agreed settlements.
- Simpler settlement terms may help HMRC to progress and conclude settlements swiftly.

185. Taxpayers who are no longer impacted by the Loan Charge do not feel they have certainty

- HMRC announcements that they will be looking for alternate ways to collect the tax from pre-2010 years are viewed as sinister by experts and taxpayers alike.

- Even those who are now out of scope for the Loan Charge fear that HMRC will still find other ways to pursue them.

186. The recommendations of the Morse Review do not properly consider small-medium sized businesses (SMBs)

- It is not clear if the Loan Charge applies where enquiries are just raised on the Company.

- The draft legislation for the Loan Charge only covers disclosures on personal tax returns but businesses would have declared their loans in different ways using recognised processes.

- It is unclear how the Loan Charge can transfer from a dissolved company to its Director.

187. The recommendations of the Morse Review do not help the public sector workers who were advised to use loan arrangements after the IR35 reforms were rolled out to the public sector in 2017

- The Morse Review did not specifically acknowledge this group who were unaware of the Loan Charge and recently started using loan arrangements.

- Workers such as doctors, nurses, social workers, teachers and other Government staff are amongst those impacted.

- Loans received after 2016-17 may still be subject to the loan charge.

- We believe that this group of people need a way out of the situation they are in, having clearly been mis-sold the arrangements. This should enable them to legally pursue the promoters who sold the arrangements, and it should also allow access to a lower percentage settlement opportunity for years that are under enquiry by HMRC or for years that are subject to the Loan Charge.

188. Some recommendations of the Morse Review have been rejected or have not been fully accepted. The following recommendations should be accepted or properly addressed.

- The recommendation to write off liabilities after 10 years for low earners.

- The recommendation for HMRC to contact taxpayers once a year to update them of the status of their open enquiries.

189. The implementation of the Morse Review recommendations is complex and confusing to taxpayers

- The documentation is extensive – eleven known documents have been published to date.
- The draft legislation is complex and is incomprehensible to an ordinary taxpayer.
- In some cases taxpayers may need to rely on professional advisers to help them to understand how it impacts them.

190. Many people are still impacted by the Loan Charge following the Morse Review

- It is estimated that c. 40,000 taxpayers are still impacted by the Loan Charge - many used loan arrangements both pre and post December 2010.
- In the majority of cases, the changes have limited or no impact on the underlying tax demanded by HMRC to achieve final settlement. The Loan Charge is still effectively a non-refundable payment on account.

191. The risk of further suicides remains critically high

- As at 9th March 2020 the LCAG help line has received 282 distress calls since it was set up. This number may be as high as c.560 if emails, Twitter interventions and follow up calls are included.
- On a regular and ongoing basis the APPG is contacted by individuals who are distressed as a result of the Loan Charge or other related issues such as enforcement of APNs.

192. The recommendations of the Morse Review do not stop loan arrangements or other similar arrangements from being offered to unsuspecting taxpayers

- There is still no real evidence of action taken by HMRC against promoters despite misleading statements from HMRC and the Treasury suggesting that promoters are being pursued.
- There are no firm proposals on how to pursue promoters in future.
- Changing the risk profile by making promoters personally liable for defeated schemes could stop the mass marketing of unacceptable tax planning going forward.

193. Some taxpayers are now facing 'recall' demands to repay their loans or to pay a significant fee to release them of their obligation to repay the outstanding loans

- The APPG has been provided with evidence of companies who have recently made demands for repayment of the outstanding loans that are subject to the Loan Charge or HMRC enquiries.

- The demands suggest that the loans are real and undermines HMRC's argument that they are really income. Recall could be enforced even where the taxpayer has paid the Loan Charge or settled with HMRC, which is grossly unfair and would force people into bankruptcy.

- Repaying the loans does not remove the Loan Charge or close outstanding HMRC enquiries, so people are faced with having to pay back loans AND pay the Loan Charge/APNs, which is clearly grossly unfair and would force people into bankruptcy.

- The fees being charged to write off loans, e.g. in case of settlement, are substantial. This is causing additional distress to the Loan Charge victims.

194. There has been no attempt to hold HMRC to account for past failures, incl. legislative process

- The EAC recommendation, supported by the APPG, for a 'Powers Review' into HMRC has not been taken up (and was not part of the Morse Review remit, set by the Treasury). So there is a need for a fuller and wider independent inquiry into HMRC's conduct and culture (as recommended by the Loan Charge APPG in our Loan Charge Inquiry). This should include looking into HMRC's use of behavioural psychology / behavioural insights.

195. There is more evidence of HMRC conduct and administrative failures (received since the Morse Review was published)

- Correspondence from HMRC appears timed to arrive at times that cause maximum distress.

- HMRC departments are not joined up –e.g. people who have settled are being chased to pay APNs.

- Lead cases in tax tribunals being coerced into settlement causing cases to collapse.

- HMRC and the Treasury continue to mislead MPs and journalists including over action against promoters and the risks of bankruptcy and being selling their homes, as described in the Loan Charge Inquiry.

Conclusion

196. The APPG believes that it has identified and evidenced the following points in this report.

197. The Terms of Reference of the Morse Review were limited and involved far too much input from HMRC and the Treasury to be considered independent.

198. The fundamental conclusion of the Morse Review, that ALL loan schemes entered into on or after 9th December 2010 would clearly generate an income tax consequence, was NOT clear. The 2011 legislation only made the law clear in respect of employee-employer loans paid by a third party. It was not clear for self-employed arrangements or for employed arrangements that involved a third party. There is overwhelming evidence that the experts who consulted to the Review did NOT agree with Morse that the law was clear from December 2010. It is wrong to apply retrospection from that date. The law for some arrangements was only clear after the passage of further legislation in 2016/2017.

199. There is unequal treatment of taxpayers before or after the December 2010 cut-off date. In some cases the new Loan Charge terms have resulted in other unintended and negative consequences for those who are now no longer impacted by the Loan Charge.

200. The recommendations do not help public sector workers who were mis-sold loan arrangements after the IR35 reforms were rolled out to the public sector in 2017. They need a way to legally pursue the promoters for mis-selling and they should also have access to a lower percentage settlement opportunity for years that are under enquiry or subject to the Loan Charge.

201. The behaviour of HMRC remains unacceptable and at times represents clear misconduct and bullying. In some cases this has been ramped up since the publication of the Morse Review. In addition, HMRC continue to take far too long to respond to taxpayers, have offered no support to those in distress and have produced statements containing inaccuracies. APNs have been used indiscriminately by HMRC with the sole purpose of collecting monies from taxpayers which have not yet been legally proven to be due. In some cases, they have been used solely to apply pressure on the taxpayer to settle on HMRC's terms. HMRC continue to apply pressure to taxpayers by using behavioural insights in communications, something that has been cited in one of the seven known suicides of people facing the Loan Charge. A current example is the sinister reference in the Review

to a new team which will continue to seek ways to apply pressure on people to settle tax which is has not been proven to be due relating to pre 2010 loans.

202. In addition, the cynical and ongoing campaign of deliberate disinformation around the Loan Charge has been continued by HMRC and the Treasury.

203. The promoters of such schemes, who are the people who received the majority of the financial benefit from the existence of these schemes, have not been pursued by HMRC despite protestations to the contrary. That the Loan Charge simply looks back and does not tackle the ongoing promotion or use of schemes in the future. Changing the risk profile by making promoters personally liable for defeated schemes could stop the mass marketing of unacceptable tax planning going forward.

204. **The Loan Charge legislation must be made prospective from the date of Royal Assent of the relevant Finance Act in November 2017 to give taxpayers back their right to have their case decided through the normal legal channels such as the tax tribunal.**

205. Settlement terms must also be revisited, for those who wish to draw a line under matters, to be less punitive and more affordable and to recognise that individuals used loan arrangements because they were advised, often by Reputable Advisers, that they could/should do so and that other parties including HMRC bear some culpability. The settlement terms must be simplified to allow HMRC to clear its backlog of cases and to conclude matters swiftly for taxpayers who have open enquiries or are subject to the Loan Charge.

206. We further conclude that HMRC's conduct, up to and including the highest levels of management, must be properly investigated.

Appendix A: Loan Charge APPG Inquiry Reports and Impact Statements

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

2. 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

3. Loan Charge Inquiry Update November 2019: http://www.loanchargeappg.co.uk/wp-content/uploads/2019/11/Loan-Charge-Inquiry-Update-Nov-2019-FINAL.pdf

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

5. Impact Statements:

5.1 Professional submissions

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

5.2 Public submissions

https://ln.sync.com/dl/ffd4baf00/2459fzgw-2nkqmqrf-bagyd6me-yyxq2jge

5.3 Redacted and anonymous submissions

https://ln.sync.com/dl/c14ffd750#znqzvkch-jt6g4na2-s9qabqvp-4eidg7di

Appendix B: Loan Charge APPG report on HMRC misinformation

http://www.loanchargeappg.co.uk/wp-content/uploads/2020/03/APPG-Report-on-HMRC-Misleading-press-releases-and-disinformation-about-action-against-promoters-March-2020.pdf

Appendix C: Loan Charge APPG submission to the Loan Charge Review

http://www.loanchargeappg.co.uk/wp-content/uploads/2019/09/Loan-Charge-APPG-document-for-Loan-Charge-Review-Meeting-27-September-2019.pdf

Appendix D: Other Loan Charge APPG correspondence

1. Letter to the Chancellor dated 18th September 2019 about the Loan Charge Review

http://www.loanchargeappg.co.uk/wp-content/uploads/2019/09/2019-09-18-Letter-from-Loan-Charge-APPG-to-the-Chancellor-regarding-the-Loan-Charge-Review.pdf

Appendix E: Other Loan Charge APPG publications

1. Loan Charge APPG report on misleading press releases about action taken against promoters

http://www.loanchargeappg.co.uk/wp-content/uploads/2020/03/APPG-Report-on-HMRC-Misleading-press-releases-and-disinformation-about-action-against-promoters-March-2020.pdf

Appendix F: Loan Charge Action Group (LCAG) correspondence

2. Open letter from the LCAG help line to the Treasury

https://www.hmrcloancharge.info/a-matter-of-life-and-death/

Appendix G: Sir Amyas Morse Loan Charge Review Report

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf

Appendix H: Government response to the Loan Charge Review

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854490/20191219_Government_response

Appendix I: HMRC guidance documents relating to the Loan Charge Review

1. HMRC/HMT Guidance: Disguised Remuneration: guidance following the outcome of the independent loan charge review

https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review/guidance

2. HMRC Guidance: Find out how the changes to the loan charge affect you *[c. 4 pages*]*

https://www.gov.uk/guidance/find-out-how-the-changes-to-the-loan-charge-affect-you

Appendix J: Draft legislation and supporting documents – Loan Charge

1. Draft legislation – Loan Charge

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859057/Draft_legislation_-_loan_charge.pdf

2. Explanatory Note v3 – Finance Bill Clauses 1-5 Schedule 1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859163/Explanatory_Note_v3.pdf

3. Policy Paper: Implementing changes to the Loan Charge

https://www.gov.uk/government/publications/implementation-of-changes-to-the-loan-charge/implementation-of-changes-to-the-loan-charge

Appendix K: Draft legislation and supporting documents – refunding voluntary restitution

1. Policy Paper: Implementing changes to the Loan Charge – refunding voluntary restitution

https://www.gov.uk/government/publications/implementation-of-changes-to-the-loan-charge/implementation-of-changes-to-the-loan-charge-repaying-certain-voluntary-payments

2. Draft legislation – refunding voluntary restitution

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868920/Draft_legislation_refunding_voluntary_restitution.pdf

3. Draft scheme – refunding voluntary restitution *[15 pages]*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868925/Draft_scheme_refunding_voluntary_restitution.pdf

4. Explanatory note – refunding voluntary restitution *[4 pages]*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868924/Explanatory_Note_refunding_voluntary_restitution.pdf

Appendix L: Independent Loan Charge Review Terms of Reference

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830531/LC_Review_ToR_web.pdf