



Loan Charge All-Party Parliamentary Group

Report on HMRC use of contractors using ‘disguised remuneration’ schemes: The reality as revealed by Freedom of Information responses

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Executive Summary

HMRC have previously been challenged as to whether they have used contractors who used 'disguised remuneration' (DR) schemes whilst working for HMRC and wholly owned subsidiary company, Revenue and Customs Digital Technology Services Limited (RCDS). They failed to answer repeated questions on this matter, starting with the House of Lords Economic Affairs Committee Finance Bill Sub-Committee in November 2018, which led to the Committee criticising HMRC for avoiding the question as to whether they had used contractors using DR schemes. The Loan Charge APPG *Loan Charge Inquiry* published in April 2019 received evidence from contractors who had worked for HMRC who were subject to the Loan Charge, having used schemes whilst working for HMRC. The Loan Charge APPG subsequently wrote to HMRC asking if they had used contractors who had used DR schemes, but once again this was not answered. A number of Parliamentary Questions have been tabled, which also failed to elicit a straight answer from the Treasury.

Due to the concern about HMRC not answering questions, a series of Freedom of Information requests were tabled, which finally led to the publication of information that showed:

1. That HMRC and RCDS *had* used contractors using DR schemes, whilst working for them.
2. That HMRC senior management discovered this from undertaking data checks, as a result of the correspondence with the EAC Sub-Committee.
3. That HMRC did not share this information with the EAC Sub-Committee, despite the Committee having asked about this matter and written to HMRC about it seeking clarification. There were three key pieces of information that HMRC discovered (and they withheld this information, until required to publish it, due to FOI requests):
 - a. Firstly, the fact that HMRC had identified contractors who had worked for HMRC with a "history of usage" of DR schemes (which HMRC established in November 2018).
 - b. Secondly, the fact that they did establish there were contractors who had used DR schemes whilst working for HMRC/RCDS (which HMRC established in November 2019)
 - c. Thirdly, in October 2020, HMRC discovered that two of the five contractors originally identified in 2018 actually *had* used DR schemes whilst working for HMRC, when HMRC wrongly concluded at the time that they had not (which may be why HMRC withheld from the EAC Sub-Committee the initial identification of contractors with a history of DR schemes)

It is clear that HMRC had a duty to inform the EAC Sub-Committee about this information, which had been discovered as a direct result of the enquiries from the Committee. Instead, a decision was taken to withhold the information, with it being embarrassing to HMRC. **We believe there should be an investigation into this, including looking at whether the Civil Service Code may have been broken.**

HMRC claim that they "have always been clear" that DR schemes were unacceptable and "did not work and claim that they communicated this view effectively. Yet in reality, the situation was far from clear, with HMRC themselves using contractors using DR schemes, *even following the introduction of the Loan Charge legislation in 2016*. **We believe this is yet more evidence that shows that the conclusion that the "law was clear" from 2010 is unsound and that the continued imposition of the retrospective Loan Charge is unjust and should be revoked.**

1. Introduction

In investigating the development of the Loan Charge and its impact on many contractors that had used payroll loan schemes, the Loan Charge APPG discovered that there were contractors who had worked for HMRC and faced the Loan Charge, as a result of contracts working for HMRC.

HMRC have used external non-employed workers – contractors – for many years and it has long been suspected that contractors working for HMRC and its wholly owned subsidiary company, Revenue and Customs Digital Technology Services Limited (RCDTs), had used what HMRC terms ‘disguised remuneration’ (DR) schemes, schemes that HMRC and the Treasury regard as unacceptable tax avoidance.

Both the Loan Charge APPG and the House of Lords Economic Affairs Committee have sought answers from HMRC (and Ministers), but on repeated occasions, in both letters and in oral evidence sessions, HMRC (and answers to Treasury questions) have avoided answering the simple question: Whether or not contractors working for HMRC had used DR schemes.

In the 2019 Loan Charge Inquiry undertaken by the Loan Charge APPG, evidence was sent to the APPG from several contractors who had worked for HMRC and who faced the Loan Charge (for arrangements used whilst working for HMRC). Further such contractors have supplied evidence since then.

Yet it has taken a series of requests made under Freedom of Information (FOI) legislation for HMRC to finally admit that contractors using DR schemes have worked for them (and RCDTS) whilst using DR schemes.

It has now been established, through the FOI responses, that HMRC and RCDTS have used contractors who were using DR schemes whilst working for HMRC/RCDTS.

It is also now clear, from the responses, that HMRC withheld this information, due to it being (in their word) “sensitive”; in other words, it is clearly embarrassing for HMRC that they were paying contractors whose remuneration was going into the very schemes they claim to have clamped down on.

2. Background

During an oral evidence session held by the House of Lords Economic Affairs Finance Bill Sub-Committee on 22nd October 2018, Ruth Stanier, HMRC’s Director General for Customer Strategy and Tax Design, was asked to answer questions from the Committee about HMRC’s possible use of contractors using loan/DR schemes, but repeatedly evaded these examining inquiries from members.

Following this, Ms Stanier also failed to respond to **four** follow-up letters requesting this information, which, from such a senior civil servant in the line of public duty, is both disappointing and unacceptable.

In one of these letters, the Chair of the Committee, Lord Forsyth, expressed the Committee’s clear frustration with the repeated attempts to evade the question asked:

“I note that you have omitted the Sub-Committee's question, communicated in writing by the Clerk after the meeting, on whether any current or former HMRC contractors have used disguised remuneration schemes. I request an answer to this as a matter of urgency.”¹

Even following this, Ms Stainer failed to properly respond, so the question still remained unanswered.

Then, in Spring 2019, as part of the evidence submitted to the Loan Charge APPG for our Loan Charge Inquiry, we took evidence from IT contractors who had worked for HMRC, had used schemes whilst still working at HMRC and were now subject to the Loan Charge. One such contractor appeared as a witness before our [Loan Charge Inquiry](#). This (alongside the responses from Ruth Stanier) is covered on page 50 (from section 179) of the Inquiry.

The Inquiry also highlighted the fact that HMRC were clearly being deliberately evasive in not answering openly and honestly as to whether or not contractors had worked for HMRC whilst using loan schemes, at a time when many suspected that this was the case and when we *knew* it to be the case.

The APPG became so concerned about this apparent flow of misinformation regarding the Loan Charge, that we sent [a letter to Sir Jonathan Thompson on 2nd April 2019](#). Once again, the question regarding whether contractors using DR schemes had ever worked at HMRC was not answered, further reinforcing the clear impression that HMRC were very concerned about the embarrassment it would cause, and so used the same line to avoid having to properly investigate and publicly admit to the reality.

The APPG Co-Chair, Sir Mike Penning, also tabled several Parliamentary questions on this overall matter, on 30th September 2020, to which the Treasury Minister responded on 9th October 2020². However, the resulting replies, as with previous responses from both HMRC and the Treasury, failed to provide satisfactory answers. Other MPs have also asked questions on this matter and have had similarly evasive answers.

Not surprisingly, considering the concern about HMRC's refusal to answer questions over their use of contractors, a series of Freedom of Information requests was made over this matter in 2019 and 2020.

This led to the publication of information in October 2020 that shows that there were contractors working for HMRC using DR schemes at the time of working for HMRC.

¹ Letter from the Economic Affairs Committee to Ruth Stainer of HMRC, 1st November 2018 <https://www.parliament.uk/globalassets/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/8-1-Nov-Letter-from-Chairman-to-Stanier-.pdf>

² Response to parliamentary questions raised by Sir Mike Penning to the Chancellor of the Exchequer 'if he will publish the names of umbrella companies to which payments were made by (a) suppliers, (b) agencies and (c) partners engaged by RCDTS in each year since July 2015 to date; and if he will make a statement', 9th October 2020, <https://questions-statements.parliament.uk/written-questions/detail/2020-09-30/97490>

3. Information revealed by the FOI responses

The FOI responses have revealed that HMRC established that a number of contractors had worked for them (or for RCDTS) whilst using DR schemes. This was done through a series of checks commencing in late 2018 and performed as a result of the questioning and follow-up letters from the House of Lords EAC Sub-Committee.

The contractors identified by HMRC as having worked for HMRC or RCDTS whilst using DR schemes are reflected in the following table.

HMRC/RCDTS Contractors identified as using DR/loan schemes

Contractor Letter	Start Date	End Date	Date of DR usage discovery	Contract terminated
Contractor A	2017	November 2019	November 2019	November 2019
Contractor B	July 2018	November 2019	November 2019	November 2019
Contractor C	July 2018	November 2019	November 2019	November 2019
Contractor D	July 2018	November 2019	November 2019	November 2019
Contractor E	July 2018	June 2019	November 2019	No longer working for HMRC/RCDTS
Contractor F	December 2019	April 2020	April 2020	April 2020
Contractor G	December 2019	April 2020	April 2020	April 2020
Contractor H	2019	April 2020	April 2020	April 2020
Contractor I	2019	April 2020	April 2020	April 2020
Contractor J	2018	April 2020	April 2020	April 2020
Contractor K	November 2017	N/A	April 2020	Not terminated as payment arrangements were amended
Contractor L	August 2015	N/A	April 2020	Not terminated as payment arrangements were amended
Contractor M	Not known	July 2020	July 2020	Within 2 weeks (July or August)
Contractor N	May 2015	February 2017	November 2018 / October 2020	No longer working for HMRC/RCDTS
Contractor O	May 2015	January 2018	November 2018 / October 2020	No longer working for HMRC/RCDTS
Contractor P	January 2016	February 2017	November 2018 / October 2020	No longer working for HMRC/RCDTS
Contractor Q	October 2016	May 2018	November 2018 / October 2020	No longer working for HMRC/RCDTS
Contractor R	August 2015	November 2019	November 2018 / October 2020	No longer working for HMRC/RCDTS (but was at time of November 2018 analysis)

Key factual points from this list of contractors:

The key points shown by this information are as follows:

- At least 15 contractors who used DR schemes have been identified as working for HMRC or RCDTS whilst using such schemes, between 2016 and 2020 (when the data was collected by HMRC, as stated “HMRC held a complete central record of departmental contractor engagements from 2016”).
- At least 11 contractors (that have so far been revealed by these FOI requests) were engaged by HMRC/RCDTS whilst using DR schemes after the 5th April 2019 Loan Charge declaration date (a date which was known from 2016/17). Given HMRC’s very public stance on the Loan Charge, we consider this to be a very surprising (and inexplicable) fact.
- HMRC/RCDTS engaged new contractors still using DR schemes as late as December 2019 (the month the Morse Review reported).
- HMRC/RCDTS still had a contractor using a DR scheme as late as July 2020, even as the Finance Bill with the Morse Review changes received Royal Assent.
- HMRC established in October 2020 that two of the five contractors actually had worked for HMRC whilst using DR schemes, having initially concluded they had not (which was why HMRC justified not sharing the discovery of the five contractors with the EAC).
- Since Ruth Stanier’s appearance before the EAC Sub-Committee, HMRC/RCDTS continued to engage (and/or renew) contractors who were using DR schemes.

4. Key findings exposed by the FOI responses

(a) That HMRC were using contractors using DR schemes despite claiming they were clear that such schemes were unacceptable and that they warned people effectively

HMRC have claimed that they “have always been clear” that the schemes subject to the Loan Charge were unacceptable and “did not work”. They have also claimed that they communicated this view effectively.

Yet in reality, the situation was far from clear, with contractors working for HMRC themselves using these very schemes and without being told by HMRC at the time that they were not acceptable (the Loan Charge APPG has been informed that contractors declared use of schemes on their tax return to HMRC, who failed to express any concern or flag any problem).

Even following the introduction of the Loan Charge legislation in 2016, HMRC continued to take on contractors who were using DR schemes and remarkably this continued right up through to 2020.

(b) HMRC compliance checks failed to identify DR scheme usage

It is clear that the 'compliance checks' HMRC and RCDTS carried out, when recruiting and engaging contractors, plainly failed to both identify and prevent contractors using DR/loan schemes working for HMRC/RCDTS.

We note that a number of the FOI responses contain the claim that checks *were* done:

“However, prior to a contingent worker commencing an assignment with HMRC, they must acknowledge acceptance of clauses regarding “Compliance with Tax Legislation”. This requires the worker to declare acceptance of a number of terms, including that “[the worker] complies with its obligations under [the Disclosure of Tax Avoidance Schemes rules] and is not involved in any way in any arrangement that is contrary to [the General Anti-Abuse Rule] or any arrangement which has been spotlighted by HMRC as an unlawful tax avoidance scheme.”³

So, if these checks were done, then either they were not carried out or completed properly or the checks themselves are simply not adequate in determining or discovering use of a scheme deemed to be a disguised remuneration scheme by HMRC. This appears to be in plain contrast to the claim by Ruth Stanier, in her letter of 5 November 2018 to the EAC, that these are performed 'diligently' – and is therefore an issue which needs to be urgently addressed.

(c) That HMRC only published this information because they were obliged to (under FOI legislation) and had otherwise intended to withhold it

This is clear from the internal emails published as part of the FOI responses.

The following is from extract from internal email, sent by a member of HMRC's Solicitor's Office and Legal Service department (name redacted) to senior HMRC officials (key section highlighted in bold):

“A series of FOI requests have now been received that will lead to this information being revealed publicly for the first time”.⁴

This makes clear that the information had not been revealed previously, at the time when HMRC became aware of it, which confirms that HMRC withheld it and did not publish it.

³ FOI2020/01606 – HMRC response dated 5th October 2020, FOI2020/01611 – HMRC response dated 5th October 2020, FOI2020/01614 – HMRC response dated 5th October 2020, FOI2020/01615 – HMRC response dated 5th October 2020 and FOI2020/01810 – HMRC response dated 2nd November 2020

⁴ From FOI2020/01810 - from internal email, sent by a member of HMRC's Solicitor's Office and Legal Service department (name redacted) to senior HMRC officials at 12:16 on 30th September 2020:

(d) That HMRC failed to inform the Economic Affairs Committee Sub-Committee

Whilst it seems unlikely (given the confirmed availability of the complete central record of departmental contractor engagements compiled in 2016), it remains possible that senior HMRC officers did not know that there were, or had been, HMRC/RCDTS contractors using DR schemes at the time of Ruth Stanier's appearance before the EAC Sub-Committee (and her subsequent letters).

However, internal analysis was done specifically as a result of the questioning from the Committee to Ruth Stanier and the subsequent letters. As revealed in an internal email, this analysis was done to:

"inform the letter from HMRC to the House of Lords Economic Affairs Committee, analysis of the contractor records held was completed"⁵ to how whether contractors had used a DR scheme.

Yet despite admitting internally that the evidence was done to inform the Committee, the information discovered in November 2018 **was then not shared with the Committee.**

Indeed, the information revealed by Freedom of Information exposes the fact that HMRC withheld the discovery that they did have contractors using the schemes they say were always unacceptable (including schemes subject to the Loan Charge). In particular, it is now clear that HMRC decided to withhold this information from a Parliamentary Select Committee that had challenged HMRC over this matter.

What the FOI responses have specifically shown, with regard to HMRC withholding this information, is as follows:

- i) First of all, we now know in November 2018, HMRC discovered that five contractors had been identified as having a history of using DR schemes and that one of those five was still engaged by HMRC at the time. This was not shared with the Committee, **despite the correspondence on this very matter at this same time.**
- ii) Secondly, it is now clear that upon establishing (from the analysis conducted in November 2019) that HMRC (and RCDTS) had indeed used contractors using DR schemes, HMRC failed to inform the EAC/Sub-Committee, when it was something that the Committee *should* have been informed about, having previously asked about it in a formal Committee meeting and in four follow-up letters.
- iii) Thirdly, we now know that two of these five contractors originally identified in 2018 (but withheld from the EAC) actually had used DR schemes whilst working for HMRC, **which means that HMRC wrongly concluded that they had not.** This was discovered in October 2020. This makes the decision to withhold the identification of the five a more serious matter, because as a result, HMRC had misled a Parliamentary Committee by giving the impression (intentionally or not) that they had no records of contractors using DR schemes whilst working for HMRC; whereas in fact they did, but had failed to properly establish and certify this.

⁵ From FOI2020/01613 - HMRC response dated 5th October 2020.

This is confirmed in the following FOI response from the HMRC Freedom of Information Team:

“As has been previously provided, in November 2018, HMRC was aware of five individuals who had a history of using DR schemes and providing services to HMRC. HMRC records did not show these individuals to have utilised a scheme while services were provided to the department...In October 2020, a further analysis of these individuals using ‘updated compliance’ information was provided. This further analysis showed that in two cases, the usage of a DR scheme was concurrent with the provision of services to HMRC”.⁶

So it is clear that when HMRC discovered important information relating to their use of contractors using DR schemes, they chose to withhold the information including from the House of Lords Economic Affairs Committee, despite the Committee’s letters to HMRC regarding this matter. They then only published this information – and the new information about getting the conclusion from the original data being wrong – when forced to do so, via FOI requests.

The withholding of the information is made worse, when it is clear that HMRC are well aware that the information is directly linked to the letters between the EAC Sub-Committee and HMRC.

The same email mentioned in section 4(c) above, from a member of HMRC’s Solicitor’s Office and Legal Service department (name redacted) to senior HMRC officials on 30th September 2020, also states:

*“These requests are directly linked to an ICO complaint from last year concerning a letter from Ruth Stanier to Lord Forsyth on the same matter”.*⁷

So there can be no doubt that HMRC chose to withhold the information and decided not to share it with the Committee, despite admitting that the information they discovered was due to the correspondence from the Committee and their questions on the matter. This is deeply troubling.

The unavoidable conclusion is that HMRC staff, presumably including senior officials, have been involved in a decision to fail to inform a Parliamentary Select Committee regarding an important matter the Committee had asked about.

We believe that withholding this information from a Parliamentary Select Committee, in this way and for this reason, is likely to be a breach of the Civil Service Code. We believe there should be an investigation into this.

⁶ FOI2020/01832 – Freedom of Information response dated 2nd November 2020 from the HMRC Freedom of Information Team (signed as HM Revenue and Customs):

⁷ FOI2020/01810 - from internal email, sent by a member of HMRC’s Solicitor’s Office and Legal Service department (name redacted) to senior HMRC officials at 12:16 on 30th September 2020

(d) The reason for HMRC withholding this information is because it is embarrassing to HMRC

It is clear from the wording of emails, that a decision was taken within HMRC to withhold this information, because HMRC knew it was “sensitive”, in other words, that it was embarrassing to HMRC.⁸

“Subject: Sensitive FOI’s regarding HMRC contractors”

It is clear that in having been forced to publish this information - information that they had previously withheld - HMRC were acutely aware of the embarrassment it would inevitably cause. For example, in the EAC Sub-Committee oral evidence session with Ruth Stainer on 22nd October 2018, Committee member Lord Hollick asked:

“would it not be incumbent on HMRC to say to people, après fact, that they should not do this, including people who presumably are contracted by HMRC itself?”⁹

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

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

Both these questions, neither of which was properly answered, showed the way it would be perceived if it did transpire that HMRC had been using contractors who used DR schemes, both from a point of view of HMRC inevitably being accused of hypocrisy, but also, as it would seem, to show the failure of their own checks and compliance systems. The embarrassment and reputational damage to HMRC would be inevitable (and justified) which is clearly why HMRC had previously withheld it, including from the EAC/EAC Sub-Committee.

As it was, there had already been some coverage in the media of the fact that if it was revealed that HMRC had used contractors who used DR schemes. This section is from an article from Contractor Tap:

“The taxman may end up with egg on his face this month after being repeatedly asked by the Economic Affairs Finance Bill Sub-Committee whether HMRC itself has ever utilised contractors who were paid using disguised remuneration schemes” .¹⁰

⁸ FOI2020/01810 - from internal emails, sent by a member of HMRC’s Solicitor’s Office and Legal Service department (name redacted) to senior HMRC officials at 12:16 and 16:49 on 30th September 2020; letter sent by a member of HMRC’s FOI Team reference FOI2020/01613, dated 10 September 2020

⁹ House of Lords Economic Affairs Committee Finance Bill Sub-Committee oral evidence session 22nd October 2018, Question 55 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/finance-bill-subcommittee/draft-finance-bill-2018/oral/92169.html>

¹⁰ HMRC chief has dodged various questions over its own contractors’ tax affairs, Contractor Tap, 28th November 2018 <https://contractortap.com/hmrc-chief-dodges-questions-over-its-own-contractors-tax-affairs>

HMRC were aware, as is clear from the internal emails, that they would indeed be embarrassed by the revelation that all along they had been using contractors using DR schemes. It's clear they knew they would indeed end up with "egg on their face".

(e) HMRC sought to "control the media narrative" rather than simply publishing the information that they had withheld (due to the embarrassment it would it cause)

One very striking phrase from the internal emails (as part of the series of responses to FOI2020/01810) is the discussions amongst senior HMRC officials about seeking to "control the media narrative" in their decision-making when dealing with the FOI responses:

"The attached drafts and associated briefing have been carefully considered by the FOI team and departmental stakeholders, sensitively balancing our obligations under the FOIA and control of the media narrative."¹¹

Instead of just (finally) acknowledging the obvious truth that HMRC/RCDS **had** engaged contractors using DR schemes, senior officers (including the First Permanent Secretary and Chief Executive) conferred internally, to try to manage the way the information would be interpreted and reported. So rather than (finally) openly, honestly and transparently acknowledging the unfortunate use of contractors using DR schemes, senior officers sought to "control the media narrative".

It is clear that ever since Ruth Stanier's deliberately diversionary non-answers to the EAC Sub-Committee, that HMRC have routinely and chronically put management of their reputation and public relations ahead of telling the truth, including to the point of providing statements designed to give a misleading impression and withholding the truth when they discovered it. **This is simply not acceptable for any Governmental body and may once again represent a breach of the Civil Service Code. It is also another example of the reality that there is a need for proper scrutiny and accountability of HMRC.**

(f) HMRC were well aware that their previous responses on this matter would be challenged as "inaccurate"

It is notable that in the course of the internal correspondence, when discussing how to handle the fact that it was about to be revealed that HMRC had indeed used contractors using DR schemes, it is stated that they realise they are likely to be challenged over the fact that earlier communications "may not have been accurate".

¹¹ FOI2020/01810 - extract from an internal email, sent by a member of HMRC's Solicitor's Office and Legal Service department (name redacted) to senior HMRC officials at 12:16 on 30th September 2020

In the same email referred to above, it goes on to say:

*“These responses proactively address the letter to the HoL to highlight that we have always been consistent on this issue whilst **defending any possible comment that our earlier communications may not have been accurate**”.*¹²

HMRC were also acutely aware, as is evident from these emails, that they had failed to directly answer questions on this previously. This is very revealing.

(g) Incorrectly stating that the Financial Conduct Authority approved HMRC contractors

It is troubling that in two of the Freedom of Information responses include a particularly troubling statement, which gives the inaccurate impression that umbrella companies used by contractors working for HMRC/RCDTS have been approved by the Financial Conduct Authority (we have highlighted the section in bold):

*“You have requested the number of contractors which have been paid through an umbrella company. I can advise that umbrella companies are known to be used by off payroll workers engaged by RCDTS via an intermediary and records show this to be the case for 110 engagements. In this scenario the contractors are required to use umbrella providers approved by the Financial Conduct Authority. Umbrella companies are not always indicators of tax avoidance”.*¹³

What makes this obvious error by HMRC so noticeable and worrying is that this was not just a case of muddling acronyms, which could perhaps be considered a careless error (if a most unexpected one, confusing a statutory body regulating financial institutions with a body that represents umbrella companies). Conspicuously, it was *not* though - as the HMRC response actually states ‘Financial Conduct Authority’.

This suggests that either there was an attempt to give the deliberately false impression that HMRC contractors had been provisioned using only umbrella companies that had gone through an approval process by a statutory body (in an attempt to help exonerate HMRC from blame for having used contractors using DR schemes), or that there is a misunderstanding and confusion even within HMRC that there is a statutory approval process for umbrella companies directly involving the Financial Conduct Authority.

Either way, HMRC need to investigate this and ensure that no staff are under the false impression that the FCA has any role in approving or regulating umbrella companies and certainly ensure that no such impression is or has been given in any external communication. This situation is compounded by that the CEO of the FCSA himself, Phil Pluck, used the incorrect acronym in a LinkedIn post (which was submitted to the APPG). Whilst this was clearly an error made inadvertently (and unlike the more serious error made in these HMRC FOI responses, is only a

¹² FOI2020/01810 - extract from an internal email, sent by a member of HMRC’s Solicitor’s Office and Legal Service department (name redacted) to senior HMRC officials at 12:16 on 30th September 2020

¹³ FOI2020/01613 – HMRC response dated 5th October 2020 and FOI2020/01810 – HMRC response dated 2nd November 2020

matter of one letter), there is nonetheless the danger of a false perception being created that somehow umbrella companies, including those directly involved with HMRC/RCDTS contractors, are endorsed and regulated by the Financial Conduct Authority, when they are most decidedly not, and it seems some HMRC officers may have under this false impression. To have HMRC officers stating that the Financial Conduct Authority has a role here, is very troubling and we suggest an internal investigation into this error and if necessary, a programme of education within HMRC to ensure that it is clearly understood that there is no statutory oversight or regulation of umbrella companies.

The fact that umbrella companies are unregulated is something that the Loan Charge APPG have raised before and this kind of confusion, including this serious error in these FOI responses, is indeed troubling and suggests that clear action should be taken to avoid any such misunderstanding in the future as well as to clamp down on any rogue providers.

5. Other contractors worked for HMRC whilst using DR schemes

It is important to point out that this specific group of contractors (finally) admitted to by HMRC and identified within these FOI requests are not the only contractors using DR/loan schemes subject to the Loan Charge.

(a) Contractors using DR schemes prior to 2016

We have evidence from several other contractors who worked for HMRC prior to 2016 and have been sent more examples recently, in response to a Loan Charge APPG tweet requesting that people in this situation make contact.

The Loan Charge APPG's April 2019 Loan Charge Inquiry included the following two testimonies from contractors working for HMRC:

- I was forced to take a loan from my bank (which has 18 months left to run at £450 a month) in order that HMRC withdrew their bailiff instruction. HMRC had refused to negotiate Time-to-Pay with me as they deemed me unable to make the repayments; on exactly the same terms that my bank agreed to. In addition, I was forced to categorise the loan as “debt consolidation” as banks will not offer loans for any tax “debt”. [...] The irony of this situation is that I started using these schemes as a contractor with HMRC.¹⁴
- During August 2007 and June 2010 I was working for HMRC as a lawyer on a temporary employment contract and during this time I used a Loan Scheme. At the time HMRC had many employees on

¹⁴ Loan Charge Inquiry written evidence - URN HC031

temporary employment contracts. I know of at least three other lawyers who were working for HMRC at this time and also using a Loan Scheme.¹⁵

The Loan Charge APPG had other such testimonies at the time and has since received several more from contractors who had worked for HMRC (and weren't/could not be the ones identified by HMRC).

The contractors identified were only those who worked for HMRC since 2016, but testimonies we have received confirm that there were others who worked for HMRC prior to that.

In addition, the media briefing HMRC prepared to deal with the information being revealed in the FOI responses makes clear that HMRC are unlikely to be able to identify contractors using DR schemes if they had already left HMRC. See the following potential question and answer from the media briefing, shared in the FOI information:

You have identified 5 workers recently engaged by HMRC, but how many workers engaged by HMRC since 2016 have used a DR scheme?

We don't have that information and where the contractors are no longer engaged by HMRC we are unlikely to be able to establish the position due to the limitations in the data mentioned earlier. Subject to these data limitations, we are undertaking a comprehensive review of the DR usage of all our current contractors. We are working to improve the data as mentioned earlier.

Therefore, in direct and challenging contrast to the clear impression HMRC tried to give previously, there will no doubt have been many contractors using DR schemes working for HMRC/RCDTS over the last 15/20 years.

(b) Workers Engaged via A Service Provider

Another important factor to consider with regard to HMRC's use of contractors is the fact that it is known (and admitted in the FOI responses) that as well as contractors recruited through approved suppliers/agencies, HMRC have also used external non-employed labour through service providers, including Capgemini.

It seems clear that when investigating their use of contractors using DR schemes, that HMRC are not taking into account contractors whom they used that worked through such a provider of external workers.

The APPG has been sent evidence from more than one contractor who worked for HMRC through Capgemini. One of these was featured in the April 2019 Loan Charge Inquiry:

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

¹⁵ Loan Charge Inquiry written evidence - URN FT004

[...] HMRC have never actually contacted me about the Loan Charge, it is only through friends that I found out about it.¹⁶

It appears from wording the internal correspondence included in the FOI responses that HMRC realise that is very likely that there are contractors who worked through a service provider, who will have been using a DR scheme at the time of working for HMRC:

“Whilst we could respond to these requests with reference to just contingent labour it does still leave an elephant in the room which needs to be addressed and which would lead to further questions. To do so would also be inconsistent with how we have responded to previous questions.”¹⁷

It is clear that there were many contractors who worked for HMRC through Capgemini and we’ve been told that use of DR schemes was commonplace.

In which case, there will have been many more contractors who worked for HMRC (and potentially also RCDTS) whilst using DR schemes, who worked through providers, such as Capgemini.

It is not clear if other service providers were used in addition to Capgemini. HMRC needs to be open and transparent about this, and to properly investigate this and establish how many such contractors were using DR schemes, including via service providers such as Capgemini, whilst working for HMRC (or RCDTS).

6. The Civil Service Code

The way HMRC, including senior officials, have refused to directly and openly answer questions and the way failed to share the information with a parliamentary Select Committee, could well break the Civil Service Code.

The Civil Service Code includes the following Standards of Behaviour sections (relevant sections are in red):

Honesty

You must:

- **set out the facts and relevant issues truthfully**, and correct any errors as soon as possible

You must not:

- deceive or knowingly mislead ministers, Parliament or others

Objectivity

You must:

¹⁶ Loan Charge Inquiry written evidence - URN RB016

¹⁷ FOI2020/01810 - from internal emails, sent by a member of HMRC’s Solicitor's Office and Legal Service department (name redacted) to senior HMRC officials at 12:16 and 16:49 on 30th September 2020; letter sent by a member of HMRC’s FOI Team reference FOI2020/01613, dated 10 September 2020

- provide information and advice, including advice to ministers, on the basis of the evidence, and accurately present the options and facts

You must not:

- ignore inconvenient facts or relevant considerations when providing advice or making decisions

As with many previous HMRC communications, there are serious question marks as to whether these standards have been breached with regards to this issue and the way HMRC have dealt with it.

It seems especially clear that HMRC, including senior HMRC officials, have not “accurately presented facts”. In addition, HMRC, including senior HMRC officials, have not only not “set out the facts and relevant issues truthfully”, but have chosen to withhold information that clearly should have been shared with a Parliamentary Select Committee. We believe the Committee should take this up, but also that this should be investigated, not by HMRC or the Treasury.

7. Conclusion

It is now confirmed, as a result of information revealed by Freedom of Information responses, that HMRC have been using contractors using ‘disguised remuneration’ schemes, including payroll loan schemes, for a prolonged period of time – well before, and long after, the Loan Charge legislation had been enacted - and even as late as July 2020.

HMRC claim that they “have always been clear” that the schemes subject to the Loan Charge were unacceptable and “did not work”. They have also claimed that they communicated this view effectively. Yet in reality, the situation was far from clear, with contractors working for HMRC themselves using these very schemes. Even following the introduction of the Loan Charge legislation in 2016, HMRC continued to take on contractors who were using DR schemes. This is clearly embarrassing for HMRC, but it also shows how prevalent the use of such schemes was and the fact that HMRC had failed to stop their use or effectively communicate to taxpayers that they should not use them, when even contractors working for them had not had this communicated to them.

We believe this is yet more evidence that shows that the conclusion that the “law was clear” from 2010 is unsound and that the continued imposition of the retrospective Loan Charge is unjust and that this should be revoked, to restore the right of affected taxpayers to challenge HMRC in the tax tribunal system and to avoid the bankruptcies and breakdowns that will alas, otherwise happen as a result of facing the Loan Charge.

It has also now been established that HMRC withheld this information, in an attempt to avoid this “sensitive” (in other words embarrassing) information coming to light and most seriously, withheld it from a

Parliamentary Select Committee that had specifically sought this information from HMRC and had expressed concern about the way HMRC had failed to properly answer questions on it.

We believe that there needs to be a full investigation into the matter, not conducted by HMRC or the Treasury. Senior officers within HMRC must provide a full and honest account of their actions in relation to these disclosures, the information exposed via the FOI responses and the way in which HMRC have responded to inquiries from MPs and Parliamentary Select Committees. This investigation should include looking to see if any HMRC officials have breached the Civil Service Code.

**Loan Charge APPG
February 2021**

Appendix A - List of Freedom of Information responses.

- Response ref - IR2019/00270 (to Gary Tinker) – Response date 12 February 2019

https://www.whatdotheyknow.com/request/has_hmrc_utilised_contractors_th#incoming-1282823.

This request was also subject to complaint to the Information Commissioner's Office and their response (dated 18 December 2019) is here –

<https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616843/fs50822158.pdf>

- Response ref - FOI2020/01606 (to Angus Fraser) - Response date 5 October 2020

https://www.whatdotheyknow.com/request/690038/response/1651272/attach/3/FOI2020%2001606.pdf?cookie_passthrough=1

- Response ref - FOI2020/01615 (to P. Matthews) – Response date 5 October 2020

https://www.whatdotheyknow.com/request/690057/response/1651275/attach/3/FOI2020%2001615.pdf?cookie_passthrough=1

- Response ref - FOI2020/01614 (to Gordon Wilson) - Response date 5 October 2020

https://www.whatdotheyknow.com/request/690069/response/1651276/attach/3/FOI2020%2001614.pdf?cookie_passthrough=1

- Response ref - FOI2020/01611 (to George Cruickshanks) - Response date 5 October 2020

https://www.whatdotheyknow.com/request/690041/response/1651273/attach/3/FOI2020%2001611.pdf?cookie_passthrough=1

- Response ref - FOI2020/01613 (to Edward Martin) - Response date 5 October 2020

https://www.whatdotheyknow.com/request/690047/response/1651271/attach/3/FOI2020%2001613.pdf?cookie_passthrough=1

- Response ref - FOI2020/01810 (to Gary Tinker) - Response date 2 November 2020

<https://www.whatdotheyknow.com/request/690304/response/1668440/attach/html/3/FOI2020%2001810%20FINAL.pdf.html>

- Response ref - FOI2020/01832 (to Helen Ashworth) – Response date 2 November 2020

https://www.whatdotheyknow.com/request/hmrc_contractors_2?nocache=incoming-1668435#incoming-1668435

Appendix B – House of Lords Economic Affairs Finance Bill Sub-Committee evidence

Oral evidence session, 22nd October 2018, transcript:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/finance-bill-subcommittee/draft-finance-bill-2018/oral/92169.html>

Correspondence between the Committee and HMRC (not complete, the Committee holds the full record):

- Letter from Ruth Stainer to Lord Forsyth 31st October 2018

<https://www.parliament.uk/globalassets/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/8-31-Oct-Stanier-to-Chairman-letter-.pdf>

- Letter from Lord Forsyth to Ruth Stainer 1st November 2018
<https://www.parliament.uk/globalassets/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/8-1-Nov-Letter-from-Chairman-to-Stanier-.pdf>
- Letter from Ruth Stainer to Lord Forsyth 5th November 2018
<https://www.parliament.uk/globalassets/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/Letter-from-Ruth-Stanier-to-the-Chairman-051118.PDF>
- Letter from Lord Forsyth to Ruth Stainer 13th November 2018
<https://www.parliament.uk/globalassets/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/Letter-from-the-Chairman-to-Ruth-Stanier---131118.pdf>

Appendix C – Loan Charge APPG Loan Charge Inquiry section on HMRC contractors

This is the section in the Loan Charge APPG's 2019 Loan Charge Inquiry (page 50) covering this issue, from what was known then. The full inquiry report, published April 2019 is here <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/05/Loan-Charge-Inquiry-Report-April-2019-FINAL.pdf>

HMRC use of contractors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HMRC have never actually contacted me about the Loan Charge, it is only through friends that I found out about it.¹⁸

I was forced to take a loan from my bank (which has 18 months left to run at £450 a month) in order that HMRC withdrew their bailiff instruction. HMRC had refused to negotiate Time-to-Pay with me as they deemed me unable to make the repayments; on exactly the same terms that my bank agreed to. In addition, I was forced to categorise the loan as “debt consolidation” as banks will not offer loans for any tax “debt”. [...] The irony of this situation is that I started using these schemes as a contractor with HMRC.¹⁹

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

During August 2007 and June 2010 I was working for HMRC as a lawyer on a temporary employment contract and during this time I used a Loan Scheme. At the time HMRC had many employees on temporary employment contracts. I know of at least three other lawyers who were working for HMRC at this time and also using a Loan Scheme.²⁰

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

I worked for the HMRC, MoJ and DWP under umbrella schemes as I was pushed in this direction by the agents recruiting on behalf of the government.²¹

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

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

¹⁸ URN RB016

¹⁹ URN HC031

²⁰ URN FT004

²¹ URN CL070

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

Appendix D – Section from Loan Charge APPG letter to Sir Jonathan Thompson of HMRC 2nd April 2019

This section, on HMRC use of contractors, is from this letter to HMRC's then Permanent Secretary and Chief Executive, Sir Jonathan Thompson dated 2nd April 2019, the letter is here http://www.loanchargeappg.co.uk/wp-content/uploads/2019/04/2019_04_02-Letter-from-LC-APPG-letter-to-SJT-re-campaign-of-misinformation.pdf

Section 4 – The fact that HMRC contractors are caught by the Loan Charge

HMRC have been notable in their refusal to properly answer questions as to whether or not any contractors working for HMRC used loan arrangements.

The extraordinary refusal by HMRC to answer the House of Lords Economic Affairs Committee's simple question of whether or not HMRC contractors were using 'disguised remuneration' arrangements is as follows:

- The question, as to whether any current or former HMRC contractors have used disguised remuneration schemes, was first asked by the Economic Affairs Committee/Sub-committee in the oral evidence session on 22nd October 2019 (Q.55), when it was put to Ruth Stanier, HMRC Director-General, Customer Strategy and Tax Design. Ruth Stanier had previously confirmed, when questioned, that HMRC on occasion engage independent contractors. She was subsequently asked by Lord Hollick, with regard to loan arrangements, as to whether,

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

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

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

- Following this the Clerk of the Sub-Committee wrote to HMRC asking, amongst other things, for an answer to the unanswered question (**the second time of asking it**)
- HMRC replied to the Committee, **but entirely ignoring, yet again, this question** (Letter from HMRC to the HoL EA Committee, 31st October 2018) <https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/8%2031%20Oct%20Stanier%20to%20Chairman%20letter%20.pdf>

See <https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/8%201%20Nov%20Letter%20from%20Chairman%20to%20Stanier%20.pdf>

- HMRC acknowledged the question, **but then evaded actually answering it**. The Letter from HMRC to the HoL EA Committee (5th November 2018) included the following:

“The Sub-Committee have asked whether any current or former HMRC contractors have used disguised remuneration schemes. HMRC has never participated in disguised remuneration schemes when paying its employees or contractors, and carries out diligently the checks required by both specific central government guidance and the law” which of course actually ignored the question as to “whether any current or former HMRC contractors have used disguised remuneration schemes.”

See <https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/Letter%20from%20Ruth%20Stanier%20to%20the%20Chairman%20051118.PDF>

- Due to this clear attempt to avoid the question asked, the EA Committee wrote again to HMRC on 13th November, **the FOURTH time of asking**. The letter (13th November 2018) stated,

‘In your 5 November letter, you stated, “HMRC has never participated in disguised remuneration schemes when paying its employees or contractors, and carries out diligently the checks required by both specific government guidance and the law.’ The Sub-Committee noted in its meeting on 12 November that you did not say directly that no current or former HMRC contractors have used disguised remuneration schemes. Could you please confirm whether this is the case?”

- Letter from HMRC to the HoL EA Committee (19th November 2018) responds by saying,

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

<https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/181119%20letter%20to%20Lord%20Forsyth.pdf>

HMRC still did not properly or honestly answer the question as to whether HMRC contractors were using such arrangements. This merely infers that it is possible that HMRC contractors could have used loan-based arrangements without HMRC being aware. They have still not answered the question asked as to whether or not HMRC contractors were using any ‘disguised remuneration’ arrangements, including loan-based arrangements (which they were).

We also know that these people were including these arrangements on their tax returns. HMRC's suggestion that they would not have known is therefore false. Indeed, the reality is that HMRC must know full well that some people who contracted to them were using such arrangements and are subject to the Loan Charge. They are evading questions and refusing to admit this, for obvious reasons.

The APPG heard first-hand testimony from a witness at the inquiry sessions who was a contractor working for HMRC and engaged via an umbrella company. Their remuneration was via a loan arrangement. At no time, despite the due diligence undertaken for this individual to be offered the contract, was the nature of the engagement brought into question.

Numerous other submissions have also been received, as part of the APPG call for evidence, from contractors and freelancers who have worked across a number of government and public service departments under similar arrangements – including at HMRC. The evidence also confirms that loan arrangements were declared on tax returns and never queried at the time.

This would point to HMRC senior management officials having given clearly misleading and evasive answers to the House of Lords Economic Affairs Committee during their testimony on 22nd October 2018.

Can you please therefore answer the following:

- 1) *How many contractors who worked for HMRC are now facing the Loan Charge in respect of periods spent actually working for HMRC?*
- 2) *How many contractors working for HMRC did HMRC write to at the time (when they were working for HMRC), warning them not to use these arrangements?*

[These questions were not answered in the response].