



All-Party Parliamentary Loan Charge & Taxpayer Fairness Group

www.loanchargeappg.co.uk

Rt. Hon. Jeremy Hunt MP
Chancellor of the Exchequer
11 Downing Street
London
SW1A 2AA

8th April 2024

Dear Jeremy,

HMRC's use of s.684 notices and disregard for the Morse Review recommendation

We are writing to you about HMRC's use of Section 684 notices (s.684(7A)(b) letters) to pursue people who had previously faced the Loan Charge, but were taken out of its reach by one of the key recommendations of the 2019 Morse Review.

We are deeply troubled about this latest tactic from HMRC which again is an attack on victims of mis-selling and another attempt to conceal their own abject failures to target employers at the time. As with the Loan Charge, this is retrospective action by HMRC going back fourteen years or more and undermining the basic framework of the tax system. It once again disregards key rights and protections of taxpayers of how far back HMRC may go to demand bills for disputed tax (including for years well beyond the seven year limit people have to keep their records).

HMRC has started issuing these s.684 notices informing the individual that the tax liability, which fell on the deemed employer, has now been transferred to them instead, making them liable for the tax that should have been paid by that employer. Freedom of Information requests ([here](#) and [here](#)) show that HMRC have already issued nearly 3,000 of these s.684 notices.

These notices cannot be appealed and individuals receiving them only have 30 days in which to seek to challenge the transfer of liability (which is a technical matter, for which professional advice is needed) or the transfer automatically happens and the employer's tax liability, which is likely to be a life-changing amount, is transferred to them and tax demands will then follow. Even if the individual does challenge the notice, the only way they can then overturn it is via Judicial Review, which is neither realistic nor affordable (and would have to be brought within three months). Considering that HMRC are retrospectively going back 14 or more years, having done nothing in that time to pursue these open years (other than seek to impose the Loan Charge), to give people such a short timescale in which to challenge a life-changing decision made using a highly contentious decision, is absolutely outrageous.

Co-Chairs: Sammy Wilson MP, Greg Smith MP
Vice-Chairs: Marsha De Cordova MP, Sarah Green MP

Office of Sammy Wilson MP, House of Commons, London, SW1A 0AA
contact@loanchargeappg.co.uk

Both the APPG and individual MPs have been contacted about this, with many of those expressing serious anxiety and distress at this latest retrospective activity aimed at this group of people. We are very worried about the impact that these notices will have on those affected.

HMRC are only able to issue these notices and transfer the liability from agency/employer to the individual by using a discretion that was never intended for this purpose by Parliament and that even HMRC are well aware is deeply contentious.

As we have raised previously, Section 684 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) is clear that the agencies involved in what HMRC calls disguised remuneration schemes should have operated PAYE (Pay As You Earn) at the time, according to the legislation and case law. These are often referred to as the 'agency rules'. It is clear that HMRC should have properly policed the contracting sector at the time and failed to do so, failed to collect PAYE from agencies/employers, hence needing instead to retrospectively pursue the workers (the employees) either through the Loan Charge or through the use of s.684 notices.

The discretion is based on the ability for HMRC to 'switch off' an employer's PAYE obligations in certain circumstances when it is appropriate to do so. Typically, the power has been used to allow very short-term employments to operate outside the PAYE system so as to avoid the need for tax to be deducted and only a few weeks later to be repaid to the worker as the worker's annual earnings are so low. The use of this discretion/power in these cases is something never envisaged by Parliament, when passing the legislation and something that is overriding the normal statutory process of dealing with open tax years.

HMRC were well aware that that the transfer of tax liability in these cases would be deeply controversial and likely to be challenged. As exposed by a response to [a Freedom of Information request](#) they had to apply to their own internal (HMRC) Contentious Issues Panel (CIP) stating:

"To our knowledge, this discretion has not previously been used to remove a PAYE liability which has arguably already arisen". They also state "It is highly likely we will be challenged on our use of the discretion in contractor loans cases".

As shown by another [Freedom of Information Request](#), HMRC simply decided to override these concerns. The Contentious Issues Panel – which is of course just an internal HMRC group – approved the decision to do this. Parliament was not consulted about this controversial decision and MPs simply found out when HMRC started issuing them.

It also appears that HMRC did not consult with the Treasury, but merely informed the Financial Secretary to the Treasury after having taken this decision. This is yet another example of HMRC making policy, rather than the Government. Even then, HMRC officers actually wondered whether to bother informing Ministers at all, stating *"David and Penny are wondering if this is something to inform FSTs office?"*). *This is the latest glaring example of the unacceptable way HMRC operate, without proper oversight or accountability.*

As well as being another example of HMRC abusing its power, the decision by HMRC to use these in cases of DR schemes ignores and undermines the conclusion of the Morse Review. One of the main

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recommendations of the Review was to limit the retrospective reach of the Loan Charge to December 2010. However all those with open tax years, that were hit by the Loan Charge, then taken out of its scope, are now it seems being hit with s.684 notices and finding that the employer's liability falls on them, meaning effectively the same outcome and the similarly unaffordable demands. The Morse Review report, published in 2019, clearly states:

*“For the twenty-year look-back period of the Loan Charge to be proportionate and justified, taxpayers would need to have acted in a way that was perverse in light of a clear legal position. This was not the case. **I therefore conclude that the Loan Charge should not apply to loans entered into by either individuals or employers before 9th December 2010, being the point at which the law became clear. HMRC should continue being able to settle and investigate cases prior to this point under their normal powers where they have appropriate grounds, and a legal basis, to do so**”.*

The key phrase here is “normal powers”. The use of the highly contentious and previously unused discretion for such cases is clearly not use of normal powers. The Morse Review recommendation clearly intended for those with open tax years pre 2010 to face the normal process in such cases i.e., with HMRC challenging schemes through the tax tribunal system. Yet instead, HMRC are abusing a discretion granted to them for other purposes, to pursue people. There is no mention in the Morse Report of s.684 notices, or the possibility of transferring the tax liability from employers to individuals. Therefore it seems that HMRC failed to inform Sir (now Lord) Morse of this possibility or of their intention to still pursue people, regardless of his key recommendation. HMRC of course had advance sight of the report and recommendations and had every opportunity to tell him. This in itself should be investigated as it renders an accepted Morse Review recommendation as largely meaningless.

What is also ironic is that HMRC's cynical use of this 'discretion' means that the Loan Charge was never needed in the first place. Moreover, HMRC could now issue s.684 notices to every single person facing the Loan Charge who has open tax years going back many years (the majority of people). The alarming reality of HMRC giving itself this discretion is that s.684 notices can be technically used against any underlying tax 'debt' for any time that an employer has failed to operate PAYE correctly, going back to 1944. This is very worrying, quite sinister and very clearly not what the discretion was ever intended to be used for when it was introduced.

The worrying reality is that if HMRC are allowed to continue to issue s.684 notices to all those with open years, there will be a devastating impact on those receiving them and their families. Whether HMRC is retrospectively demanding tax via the controversial Loan Charge or the equally controversial discretion to transfer of tax liability, the outcome will be bankruptcies, breakdowns and a risk of yet more suicides.

We note that you have answered parliamentary questions and referred to the March 2022 Court of Appeal ruling. It is important to say that whilst the Court may have overturned the previous decision at the Second Tier Tribunal in this case and whilst it may have concluded that HMRC can legally use the discretion in the way they are, according to how the legislation is drafted, this does not mean that the legislation was ever envisaged to be used for this purpose. Nor does the decision mean that using it in this way is fair when it comes to those caught up in the whole nightmare of the Loan Charge Scandal and the mis-selling of these schemes.

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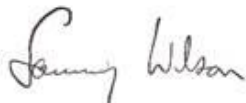
This APPG has continually argued that the Loan Charge is against the rule of law, is unfair and draconian and that it should be repealed, but that at the same time, that there should be a proper resolution to end the nightmare for the tens of thousands of people affected. Instead, HMRC is now causing a new crisis for those who thought that the Loan Charge no longer applied. It is cruel and dangerous, but also will not resolve the situation for those affected or for HMRC. It remains the case that however HMRC pursues people retrospectively for schemes HMRC didn't challenge at the time, people simply cannot now pay the completely unaffordable sums being demanded, through the non-normal means of either the retrospective Loan Charge or retrospective s.684 notices.

The resolution to this nightmare is for the Government to order HMRC to take a reasonable and sensible approach, along the lines of the resolution proposed by independent tax sector professionals. It remains very disappointing that the Treasury have up to now completely refused to engage with this or those behind it (whilst HMRC routinely do deals with corporations over disputed tax bills). We urge you now to properly engage with this resolution and with these professionals, to pursue a solution to the whole Loan Charge Scandal that avoids the devastating impact on thousands of individuals and families of continuing the current approach.

We also note the latest wider criticisms and concerns about HMRC, including the fiasco over the announcement that the helpline would be closed for half the year (which you did intervene over, causing an unusual but most welcome U-turn). We once again make the broader point that Treasury Ministers are supposed to hold HMRC to account, for poor practice and abuse of power, rather than defending and speaking for them. We hope we will at last see this approach change.

We look forward to hearing from you and, we hope, immediately ordering a halt to this latest abuse of power and position by HMRC.

Yours sincerely,



Sammy Wilson MP
Co-Chair



Greg Smith MP
Co-Chair



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Vice-Chair



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