



All-Party Parliamentary Loan Charge & Taxpayer Fairness Group

www.loanchargeappg.co.uk

Rt Hon Rachel Reeves MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
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26th February 2025

Dear Chancellor,

Review into HMRC's Loan Charge settlement terms/demands led by Ray McCann

We are writing with regard to the announcement of a review into HMRC's Loan Charge settlement terms/demands which is being led by Ray McCann, former senior inspector of the Inland Revenue/HMRC.

We have some important questions about this review, as there is a need for more understanding and, in some cases, clarity about it, as there is potential confusion and possible misunderstanding about key aspects. This is very important for all those who are affected.

Clearly what has been announced is not the full review/inquiry that we had called for in our letter to you in December. We still believe there is a very strong case for a full, genuinely independent inquiry into the whole Loan Charge Scandal and that only this will get to the whole truth about the issue and the profound failure of the legislation to achieve what previous Ministers (in previous Governments) said it was introduced to do.

Our letter also made clear that such a review/inquiry should be chaired by someone with no history of working for HMRC and with staff provided from outside of HMRC and the Treasury. Again, neither of these things is the case with the limited review that has been announced.

However, we do of course welcome that someone who is currently outside of HMRC is reviewing settlement terms/figures, to assess if they are reasonable, fair and affordable, or not. We hope that Ray McCann, who has been appointed to conduct the review, will be able to resolve some of the many cases that remain outstanding even if he does not have the power to properly investigate the whole matter, nor deal with cases that involved the same mis-selling of the same schemes, where people have settled with HMRC or where the cases are pre-2010 and were taken out of the remit of the Loan Charge by the previous Morse Review.

It is important to be clear about what this very limited review is about (and what it doesn't cover)

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both in terms of honest presentation, but specifically so that people affected can understand if and how their own cases will be involved and what the effect could be.

The Terms of Reference clearly states what this review is reviewing (and therefore what it is not reviewing):

The settlement terms available to those who are subject to the Loan Charge who have not yet settled and paid their tax liabilities in full to HMRC and whether HMRC's settlement and debt management processes sufficiently take into account their ability to pay and behaviours;

Due to the Government describing this as an Independent 'Loan Charge Review' there is inevitably confusion as to what it is actually reviewing and not (as well as you are aware, some criticism of the very narrow remit). It is also factually incorrect to describe HMRC's Loan Charge demands as people's "tax liabilities" when these demands are not legally proven as being tax due and when the whole point of the Loan Charge is that it avoided the need for HMRC to have to go to court to prove this on a scheme-by-scheme basis.

However, what we wish to focus on is the areas where clarification is needed regarding the review as announced, which I am sure you will agree is vitally important for all affected. To that end, with regard to this review of the settlement terms, the questions we wish to ask are as follows:

Questions Directly Related To The Review

1. What evidence is Mr. McCann able to take into account?

Mr. McCann, in the meeting we attended on 22nd January 2025 the day before the review was announced, gave the impression that he wanted evidence about the broad issue/scandal.

However, such evidence is clearly beyond the very narrow remit of the Terms of Reference of the review, which was published the next day.

There is therefore some confusion on this point (particularly from those people facing the Loan Charge, some of whom have raised this confusion with the APPG).

Therefore, guidance is needed as to what evidence will be considered and what will not be. Please let us know when such guidance will be issued.

As mentioned above, it remains our position that there should be a proper full review/inquiry that looks at ALL evidence regarding the Loan Charge Scandal. However, with this very limited review, of settlement terms only, it is imperative that the Government and/or the reviewer make a clear public statement about what evidence is eligible and will actually be considered, so that all parties that wish to supply evidence are made aware of this.

2. What role and how much influence the Treasury and HMRC will have

This is an important question and is not clear from the Terms of Reference.

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What is clear is that this is not an independent review, with no involvement from HMRC and Treasury officials, which is what we had called for.

Accepting that it is a review of HMRC's 'settlement terms' i.e. HMRC's existing Loan Charge calculations and the current terms of repayment (by a former senior IR/HMRC inspector) – there still needs to be clarity on what and how much influence HMRC and Treasury officials will have and be permitted to have, as this is not laid out in the Terms of Reference.

We note the following sentence in the Terms of Reference:

The reviewer is expected to draw upon information and analysis provided by HMT and HMRC during the review.

This very clearly is not an independent review. A properly independent review would seek evidence and accept analysis from all sources. One that is directed to "draw upon" evidence and analysis from the two bodies who are responsible for the 'Loan Charge debacle' (to use the words of the former HMRC CEO and First Permanent Secretary) cannot be independent.

The concern here, from direct experience that the APPG has had, is that this sentence gives HMRC (and Treasury officials who work with HMRC) carte blanche to analyse all evidence sent by other people. This would be wholly unacceptable.

We need a categorical assurance that neither HMRC nor Treasury officials will be allowed to see other evidence submitted, especially from individuals. Can you therefore please provide this?

Without this assurance, many people will simply not feel comfortable submitting evidence of their own case, because it would be assumed that HMRC will examine it and (as they have done with evidence before, including that provided by the APPG) will seek to give a different and partial impression.

We also note in the terms of reference that it says:

The final report will be shared with HMT and HMRC before publication, who may be asked to provide factual comments on it.

We had explicitly said (with a proper full review/inquiry) that this should not happen, but in the case of this limited review of HMRC settlement terms, we wish to clarify what this sentence means in practice.

It is known that HMRC proposed changes to the original draft Morse report (and the Treasury has failed to properly comply with Freedom of Information requests to publish it). It is important to be clear now just what changes that HMRC and the Treasury will be permitted to make to the draft report and just as importantly, if those changes will be made public.

3. Please clarify what is meant by the statement "HMRC will set out whether [they] think the DR arrangements they used will be considered by the review or not"

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The supporting document ***HMRC operational activity during the new independent review of the Loan Charge*** states:

HMRC will set out whether [they] think the DR arrangements they used will be considered by the review or not.

It is not at all clear what this means. Already there is very significant concern amongst those affected by the Loan Charge that this means HMRC can decide who is even eligible to have their case reviewed or not. This sentence does give what we hope is a mistaken impression that HMRC have a role in deciding which individuals can be part of the review.

We presume/hope that all this means is that HMRC will be telling everyone who is facing the Loan Charge that their case (and settlement terms/figures) can be reviewed. If this is the case, then this paper should have said this explicitly and avoided the unnecessary concern.

As it is, there are many people caught up in the whole Loan Charge Scandal that *are* completely excluded from the review (see point 12 below) so it is very important to clarify whether this sentence merely means that HMRC will be explaining that the review involves everyone facing the Loan Charge (if that is indeed what it means). **Please can you clarify this.**

4. What evidence are individuals expected to supply and in what format?

It is bizarre that despite the review being announced on 23rd January, that there has not been a direct call for evidence and no direction has been given to the tens of thousands of people who will or could be eligible to have their cases reviewed.

It is also surely important for Mr.. McCann and the review team that evidence is submitted appropriately, in a format that makes it easy to understand and follow, when there are so many thousands of cases and people who are likely to submit evidence.

A form for people to fill in or, if that isn't to be produced, clear guidance on what to submit, would assist both the reviewer and review team and individuals affected.

Please confirm if an announcement is going to be made, to provide guidance to individuals on what to submit and in what format.

5. How will Mr.. McCann make decisions as to whose settlement figures/position should be changed, when it is impossible to review all individual cases?

HMRC has not updated its estimate of around 40,000 facing the Loan Charge, which means that there are still a huge number of cases that are eligible to be part of the review.

A proper review of HMRC's Loan Charge settlement terms/figures would and should assess each and every case, but this is presumably impossible in the timescale set out for this review. If individual

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cases are not all being properly examined, as they should be, then how will Mr. McCann make recommendations?

Presumably if not on an individual basis, he will need to do this by coming up with 'categories' of cases to be put into bands and treated in a certain way? Can you please confirm if this is correct or if someone on the review team can somehow look at every single case?

6. What are the key factors regarding settlement terms that will influence Mr. McCann's decision making?

Due to this review being a review of the fairness of HMRC's Loan Charge settlement figures offered to those still facing it, it is vital to know what factors Mr. McCann will (and is permitted to consider) in making recommendations as to altering settlement terms/demands.

Presumably you and the Government have already advised Mr. McCann what factors to take into account (and therefore, by default, what factors he should not).

Can you please tell us what factors specifically are to be taken into account?

The Terms of Reference states that the review will "consider in detail":

The settlement terms available to those who are subject to the Loan Charge who have not yet settled and paid their tax liabilities in full to HMRC and whether HMRC's settlement and debt management processes sufficiently take into account their ability to pay and behaviours;

This therefore suggests that the two factors Mr. McCann will consider are ability to pay and "behaviours". Is that correct or will any other factors be taken into account (that are not mentioned in the Terms of Reference).

7. What "behaviours" (of individuals affected) will be taken into account?

Can you please tell us specifically what "behaviours" of individuals will be taken into account? This is very important for understanding what Mr. McCann will be making the recommendations on the basis of and also important for individuals submitting evidence.

8. Will the behaviours of other parties responsible for the mis-selling be taken into account?

Our biggest concern about this limited review of settlement terms is that it only focuses on individuals' actions and behaviours and deliberately excludes the actions of all those involved in recommending, promoting and operating schemes. We address this separately in point 11.

Alas, it seems clear from the terms of reference that the behaviour(s) of HMRC are not included, which is wrong, considering HMRC's inaction at the time schemes were being mis-sold and used. Tens of thousands of taxpayers were not warned, despite HMRC being aware of their scheme usage. In many cases, HMRC signed off tax returns with scheme use declared and failed to open enquiries,

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which of course would have naturally led people to assume that all was in order with their tax affairs and that there could be no later challenge to those tax years. (Something the Loan Charge has unfairly overturned).

One would have thought that HMRC would have welcomed the opportunity to be included and potentially exonerated as part of the review. That the terms of reference have excluded HMRC would indicate the opposite, which alas is no surprise. We will continue to push for proper, much needed scrutiny of HMRC's role and failures and of its conduct in dealing with individuals affected.

In reality, a meaningful assessment of "behaviours" only of individuals and not of other parties, promoters, accountants, umbrella companies, end clients and HMRC, is skewed, biased and unfair.

Considering the (unreasonably restricted focus) on individuals, can you advise if and how Mr. McCann can take into account the (unacceptable/unfair) behaviours of other parties?

9. In terms of "affordability", what parameters/restrictions have been set in terms of being allowed to reduce or cancel settlements?

One fundamental point is what leeway Mr. McCann has to actually reduce (or cancel) HMRC's demands. If "affordability" is at all meaningful, he must have the ability to do this, or it is not even a genuine review of settlement terms/demands, never mind a review of the Loan Charge.

We are concerned that the Government has put in place a restrictive framework that may make it difficult or impossible for Mr. McCann to actually reduce or cancel demands, were he to deem that the appropriate conclusion.

In the exchequer's letter to Mr. McCann, it says this:

We want this review to bring the Loan Charge to a close for those people who still owe substantial amounts of money but can see no way to resolve their debts. **It must, however, do so in the context of the very challenging fiscal situation we face.**

As we have discussed, the review must therefore focus on bringing closure for the unsettled and unpaid Loan Charge populations, with targeted solutions **that have the minimum possible impact on the public finances.**

Solutions should not undermine the fundamental principles of the tax system that individuals are responsible for their own tax affairs and that tax owed should be paid.

Given our approach to closing the tax gap and the fiscal position, we will not be able to accept recommendations that do not meet these criteria. I believe you understand this and recognise the importance of the principles that I have set out.

The reality is that the 'debts' mentioned here have never been proven in court and it is very disappointing that this partial review has excluded looking at the legal position at the time of the schemes being used, the Loan Charge and the fairness of this legislation.

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Notwithstanding that, what we do wish to ask is what this actually means, in practice for this review of settlement terms. In other words, what parameters is the review operating within, in terms of how much Mr. McCann can reduce individual demands (not 'debts') by and how much is he permitted to reduce the overall prediction of revenue by. These are fundamental questions, because the suggestion from the wording above is that he will not have very much leeway, in which case the whole review would be fairly meaningless. We sincerely hope that is not the case.

We also want to reiterate the point that was made at the meeting in August to which you invited some MPs. As Sir David Davis made clear at the meeting, the settlement figures being demanded are fictional. Indeed, they are actually based on HMRC's best guess of what might have been owed, not based on the factual position under the law at the time (especially when a huge number of those affected would otherwise have been working through a limited company, had they not specifically been given professional advice to instead use a payroll remuneration scheme).

Similarly, the estimates provided by HMRC of how much they predict the Loan Charge will raise are entirely fictional, because people simply cannot afford the sums being demanded, so in reality HMRC will never collect anything like the huge sums they predict (and very notably have failed to answer questions about these predictions, including in replies to letters from the APPG and in answers to parliamentary questions).

For us to accept that this is even a genuine review of settlement demands, the Government needs to state exactly how much Mr. McCann is allowed to reduce settlements by and how much the overall (albeit fanciful) sum the Loan Charge has been predicted to raise. Please therefore tell us what this figure is.

10. Will the Government put cases on hold by suspending interest?

The Government document, *HMRC operational activity during the new independent review of the Loan Charge* states:

HMRC will continue to engage with customers to finalise their tax positions for DR arrangements that HMRC believe will not be considered by the review.

What this means in practice is that cases are not "on hold" as has been suggested. It means that people are still facing a decision as to whether they should settle now, to avoid the demands they face getting even higher (and even more unaffordable) but then losing the possibility of their settlement terms improving. This is putting people in a wholly unfair position and akin to having to gamble on the possible outcome.

This is not good enough. We realise that HMRC have no choice (legally) as to whether the interest continues to accrue, but the Government does have a choice and could introduce a statutory instrument to pause interest, which is clearly what should happen (and what the Government should have done to allow a genuine pause during the review, which is what it has claimed has happened).

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Will the Government now suspend interest (and any penalties, including for related Accelerated Payment Notices) until the review has concluded and the Government/HMRC have implemented changes, so that people are not forced now to gamble to either participate in the review knowing that HMRC's demands of them could get even larger or give up the chance to have their case reviewed, to avoid an even larger bill?

Other Questions/Issues

We also have some important questions that are, unfortunately, outside the remit of this limited review of settlement terms, but need answering as part of resolving the whole issue and mess (which is what the Government has stated it wishes to do).

11. With promoters and other parties in the supply chain excluded from the review, how will the Government enable HMRC to pursue those who promoted, operated and profited from mis-selling schemes?

One of the biggest disappointments of the very limited review is that despite you yourself describing people as "victims of mis-selling" and you and your colleagues being highly critical of the previous Government for allowing HMRC to pursue them and not pursue those who perpetrated the mis-selling, the review as announced completely ignores those responsible.

This is despite you saying in January last year in an interview on LBC Radio:

"HMRC seem to be coming after the people who were mis-sold these products rather than the people who were mis-selling them, and that is a real scandal.

"...who are the real culprits here. It's the people who mis-sold products, and people like [Doug, caller] are the innocent victims in this sort of war of attrition with HMRC now".¹

Exchequer Secretary James Murray has similarly said:

"The [previous] Government should be going after the promoters who were driving people towards these schemes. There is a strong feeling that the promoters are getting away with it while people in everyday jobs are victims of mis-selling".²

Chief Secretary to the Treasury Darren Jones MP last year also stated:

"It can't be right that HMRC are pursuing victims of mis-selling so aggressively but not those who misled victims."³

We presume therefore the Government will be announcing other measures outside of the remit of the review of settlement terms, to properly take action against those who promoted and operated and mis-sold these schemes, some of whom made millions of pounds by doing so.

¹ LBC Radio, interview with Iain Dale, 29th January 2024.

² Yorkshire Post, interview with Greg Wright, 8th December 2021.

³ Twitter/X, 18th January 2024.

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Could you please therefore tell us what measures you intend to take, when, to address your and the Exchequer Secretary's clear intent that HMRC should be going after those who mis-sold schemes, rather than their victims.

It is deeply disappointing when you yourself described people as innocent victims of mis-selling that the current review instead continues the current position of assuming guilt on the part of all these people. We hope you will go some way to putting this right by announcing tough retrospective action against promoters and operators of schemes and seek some of the tax being demanded from them, which would of course enable Mr. McCann to be more generous in resolving cases for all those mis-sold.

12. How will the cases of victims of mis-selling who are not covered by the Loan Charge itself, be resolved?

The Terms of Reference clearly state:

The review is specific to the Loan Charge and will not consider uses of disguised remuneration schemes that are outside its scope. That is, the review will only consider disguised remuneration scheme use between and including 9 December 2010 and 5 April 2019 that is in scope of the Loan Charge legislation (Schedules 11 and 12 to the Finance (No.2) Act 2017). It will consider both outstanding Loan Charge liabilities and the related outstanding liabilities arising from the underlying income received via this use of disguised remuneration schemes.

The limitation of the review to those actually facing the Loan Charge means that people who used exactly the same schemes as those caught by the Loan Charge – people who are equally victims of mis-selling, to use your own words – are excluded from the review.

This includes those who have settled, many of whom are clear that they only settled because they felt they had no choice and that they would face much higher and even less affordable demands from being hit by the Loan Charge, if they did not settle. Many are clear they effectively settled under duress. It would be wholly unfair for a review to reduce or remove demands from those who have not settled, whilst doing nothing to alter 'settlements' already made or agreed to.

This also includes people with open enquiries pre-2010 that officially were facing the Loan Charge (when it outrageously had a 20-year retrospective reach). Those people with no open enquiry for these years were then removed from the Loan Charge due to the Morse Review. Those who used the *same* arrangements but *did* have open enquiries (and there are many of these cases) are excluded from the review (as are other cases where HMRC is controversially using s.684 notices in a way never intended by Parliament when they were introduced).

Another group is those who are victims of mis-selling post April 2019. One of the most obvious (and absurd) parts of the Loan Charge legislation is that it doesn't cover schemes post April 2019. Considering that the Loan Charge was introduced to "draw a line" under the kind of schemes now subject to the Loan Charge, it was an extraordinary failure that the legislation introduced only applied to schemes up to April 2019. As HMRC and Treasury are well aware, schemes continued to evolve and proliferate and due to the (in our view ill-considered/botched) roll-out of the IR35 legislation, public sector contract and freelance workers were targeted by these promoters, which

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included many lower paid workers including workers in the NHS and social care (some of the people the Government has indicated it has particular concern about).

Overall, these groups may not be directly covered by the Loan Charge, but are absolutely part of the whole Loan Charge Scandal, victims both of mis-selling by promoters, accountants, recruitment companies and umbrella companies and victims of HMRC failure at the time and unfair treatment later. Why therefore has the Government excluded these people?

When one of the objectives of this review is to “Bringing the matter to a close for those affected”, the result is that the very restricted nature of this review of settlements means that many cases *cannot* be brought to a close.

The fundamental question therefore, is how you intend to address this and (with there being a duty to treat all taxpayers equally) how they will be subject to the same settlement terms as those directly facing the Loan Charge? We do also hope that the Government will separately announce other ways that the cases that are outside the remit of the review can be similarly assessed and resolved.

Conclusion

We will of course be encouraging people to submit their evidence to the review, once the Government or review has published what evidence is eligible and what evidence the review specifically wants from individuals and in what format. This therefore is the most urgent action required in response to our letter.

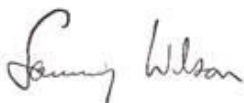
We will also encourage APPG members to encourage their affected constituents to send in their evidence.

We will also be submitting evidence to the review ourselves, from the considerable amount of evidence and analysis we have gathered from the last five years since the APPG was established.

We will also continue to maintain that it is vital that there is a wider inquiry to look at the role of all those who profited from these arrangements but have not faced any action, as well as a proper examination of the role and conduct of HMRC.

We look forward to hearing from you.

Yours sincerely,



Sammy Wilson MP
Co-Chair



Greg Smith MP
Co-Chair

cc James Murray MP, Exchequer Secretary to the Treasury
Dame Meg Hillier MP, Chair, Treasury Select Committee

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