All-Party Parliamentary Loan Charge & Taxpayer Fairness Group

www.loanchargeappg.co.uk

Ray McCann
McCann Review into Loan Charge Settlements
Sent by email contact@lcreview2025.org.uk

27th May 2025

Dear Ray,

APPG meeting discussing your review into Loan Charge settlements

First of all, may we thank you and Nick for coming to the recent APPG meeting. We appreciated you doing this and engaging with the Loan Charge and Taxpayer Fairness APPG regarding your current review into Loan Charge settlements.

We found it a helpful meeting and discussion. However, we do have some issues and concerns as a result of the some of the points you made, so we are writing to follow these up with you.

1. The reality of your review/resolution proposal – categories of individuals/'behaviours'

First of all, as we discussed, your review is not a review of the Loan Charge itself, nor the whole issue and scandal, but (to quote from the Terms of Reference) is to *"examine the barriers preventing those who are subject to the Loan Charge but have not already settled. It will recommend ways in which they can be encouraged to settle with HMRC".* You are aware that this is not the full and proper review that the APPG wanted and indeed what it is in reality is an exercise in your coming up with a proposal for some reduced and affordable settlement terms, rather than being a review.

In your recent interview with Computer Weekly, on 1st April, you gave a statement that effectively confirmed this, where you said, *"I want to end up with a situation where people get a settlement figure from HMRC that they can look at and say, 'Well, okay, even if I'd rather not pay it, I can pay it, within a reasonable period if necessary'."*

During our meeting, you gave further information on this, where you described how your intention is to come up with categories of cases and a proposed settlement for each category. This is helpful in terms of understanding how you intend to come up with a proposal (even if we still believe there should be a proper review and full consideration of whether the Loan Charge itself is justified and including the possibility of recommending that the Government seeks to recoup the disputed tax from other parties, including those who promoted and operated the schemes). You also stated that it would be impossible to look at all cases, when there are in the region of 50,000 or so.

You also went on to explain the basis of your categorisation and accepted that it would be based on "generalised, informed assumptions", including based on bad promoter behaviour, bad HMRC behaviour and how difficult it is for individuals to pay what is being demanded. Later in the meeting Nick also suggested that the categories would be based on a number of factors such as different income types, different backgrounds, different professions, different schemes used, understanding how and why people got into the schemes, what happened while they were in it and what they are experiencing from HMRC now.

Once you have reported on these categories that you have determined people fall into (and thus the kinds of settlement terms offered to them, if the Government accepts your recommendations), it may be that some people feel (and may actually be) in a category that does not reflect their circumstances.

You said yourself at the meeting that your recommendations will broad brush and that this is "probably a wee bit unfair" but that "the recommendations will be designed to create a mechanism that can be applied". You therefore acknowledge that there is the possibility of unfairness.

Will you therefore also recommend some kind of appeal process, whereby individuals can challenge their categorisation and provide information to show they should be treated differently? We think that without this, there could be the potential for arbitrary categorisation (or mis-categorisation). We feel some kind of appeal process would be appropriate. Will you therefore consider this?

2. Your comment about "persuading HMRC" to agreeing an overarching approach

We were especially troubled, as well as confused, when you said *"what I'm hoping is I'll be able to persuade HMRC to agree to an overarching approach whereby if the mechanism still doesn't get the person to a position where they can settle with HMRC on reasonable terms and be able to pay it, then HMRC can intervene and make sure that that works*".

Your review is presented by Government as independent, so why would you be seeking to persuade HMRC of anything? This is deeply concerning and we would ask you to clarify what you mean by this.

It is imperative to point out that HMRC is the public body that came up with the concept of the Loan Charge and the public body that you yourself has made clear has badly mishandled this whole issue. The public body that has been routinely less than honest about the whole Scandal and the public body whose policy, approach and conduct is directly linked to suicides.

As we made explicitly clear to the Chancellor when we wrote to her in December laying out what a full and genuinely independent review should look like, we made clear that there should not be private discussions with HMRC and that HMRC should not be shown the recommendations of your report before publication (or influence them, let alone veto them, which is what your words appear to infer). In our letter we stated: *"Unlike the 2019 Morse review, this review/inquiry must be genuinely and fully independent of HMRC and it has been established, there must be no role or involvement of HMRC at any stage. There must also be no involvement of Treasury (or Government as a whole) once the review/inquiry is established".*

That remains the case, with your restricted review, if it is to be regarded as at all independent and HMRC should not be consulted at all, they should merely supply evidence to you when you ask them

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to do so. Yet we know now that both HMRC and the Treasury – the very Government bodies that should and would be subject to a proper review/inquiry – are being permitted to discuss your draft report, before you finalise your report and recommendations. This is simply unacceptable and reinforces our position that a full and genuinely independent inquiry is needed.

3. Your statement that you will have discussions with the Treasury and HMRC before finalising you report

We are deeply concerned that you stated that you intend to have discussions with HMRC and the Treasury in late June "under the agreement that I have with the Exchequer Secretary". What is this agreement?

In our letter to the Chancellor in December, we very clearly and unequivocally stated, *"There must be no private discussions or communications between HMRC or the Treasury during the review/inquiry. The only communication must be evidence submitted to the review/inquiry, which must be published and public".*

We also explicitly stated that "*No party should be allowed to see the report or hear of any conclusions or recommendations until it is published***"**. Yet you have now told us that not only will both HMRC and the Treasury have such discussions (and discuss the review report/recommendations) but that there is an 'agreement' that this must happen. This is extraordinary and completely unacceptable.

This is simply not how a genuinely independent review operates and we object strongly to the admission of private discussions and to showing the draft report to the two public bodies responsible for the whole "Loan Charge debacle" (to use the former First Permanent Secretary and Chief Executive of HMRC's own phrase.) This being the reality of your review, neither those affected, nor most Parliamentarians, will regard it as either independent, or anything like the proper inquiry or genuine review which was (and still is) needed.

4. Our concern that you have appear to have already assumed that the tax is due from individuals

As part of these developing proposals for a resolution, you stated that some people might pay a nominal sum and that others may still pay a substantial sum, perhaps less that what is "due".

Our concern about this is twofold. First of all, a genuine review/inquiry would be permitted to consider if the tax is actually due, on the basis of the law at the time (before the deeply controversial retrospective Loan Charge was introduced).

Secondly, your use of the phrase "what is due" is stating that your review assumes that HMRC's demands are for tax that is due, when one of the deeply controversial things about the Loan Charge is that it is based not on *actual* tax due but on HMRC's *assumption* that this tax is due from those affected. A genuine review would look at this. Moreover, as you know (and as came up at the meeting), the sums being demanded from people are often simply estimates of what HMRC thinks they would have paid under Pay as You Earn income tax, when many thousands of those affected would otherwise have worked through a limited company. Many of the contractors affected were never given the opportunity to work as an employee of the end client, making it even more troubling that HMRC assumes that they should have been (when contracting is and has been very different from

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employment, without the same security, employee benefits and holiday entitlements). Surely therefore rather than accepting that HMRC's current demands represent "tax due" you should be reviewing *all* of this – and what people actually might have paid under other arrangements (as well as what they would have paid under the arrangements they did use, according to the law at the time, with the Loan Charge not existing).

We are therefore troubled – as much as we believe and respect your desire to make 'settlements' (i.e. payment terms/sums) more affordable – that you seem to be adopting the language of HMRC, that their demands do represent "tax due" when this is not a proven or actual situation, which is much more complicated.

5. Your comments don't reflect the fact that in many cases the tax should have been collected from the agency/employer and the reality of the 'agency-rules' and PAYE credit issue

Your comments also appear to make the assumption that the tax is due from the individuals affected and not from other parties. In actual fact, there is dispute over whom the tax deemed not to have been paid should be collected from and why. This links to the issue of the agency rules. Again, a full review would investigate this fully and carefully to assess where HMRC failed to collect tax due from agencies/employers and then be able to recommend that a credit be given to the taxpayer and potentially to recommend how it might be recovered from the party HMRC should have collected it from (rather than going after the individuals, whom the House of Lords Economic Affairs Committee called the "low-hanging fruit").

Not considering this issue – and being able to make recommendations about it – makes any review partial and unsatisfactory so we would ask how you intend to take this into consideration.

Related to this important point, you were asked about the whole issue of PAYE credits. This is an issue we raised in our letter to the Chancellor in December, as a key issue for any fresh review. We said any review must look at, "*The 'agency rules' and HMRC's duty to collect PAYE from agencies/employers at the time, as is explicit in its own internal manual and why and how HMRC failed to do this".*

You said that you are aware of aware of the PAYE credit issue, but that you'd have to look at every case. We believe that in this regard, every case *must* be looked at (which we appreciate could not be the role of your review, but nonetheless every taxpayer – every citizen – has the right that their case and the applicability of the PAYE credit issue is assessed and impartially, not only by HMRC).

We are deeply troubled, therefore, at your comments where you suggested that you "the bar that you're having to go over" is having to persuade HMRC that they should buy the PAYE argument. Surely every taxpayer has the right to have this properly assessed, rather than HMRC doing so, when of course it was HMRC that failed to enforce the agency rules and collect the tax at the time from the agency/employer. They clearly have an inbuilt prejudice and huge interest in declaring that people are not entitled to PAYE credit. This must be properly and impartially settled in each case – based on the law - and perhaps you might consider and recommend a realistic mechanism for this to happen.

Re-iterating the comments in section 2 above, we are extremely troubled that you are saying that you are having to persuade HMRC of anything. This is absolutely not how any genuinely independent review should operate. HMRC should have no input into any recommendation that you make to

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resolve this, as the public body most responsible for the whole Loan Charge Scandal. You yourself have been highly critical of HMRC's performance, attitude and "punishment strategy" over this issue, so the idea of you having to (or even seeking to) persuade them of anything is completely wrong and at odds with any perception of your review as independent.

At the meeting, we discussed the issue with defining who the agency/employer was and who therefore should have paid the tax due under the agency regulations. You were asked about the problem that some contractors appear to have had one employer for employment /employment rights purposes and one for tax purposes. However surely the test here must be as per the law, the party that had 'supervision, direction or control'?

The key issue of whether the employer was onshore or offshore was raised and this too relates directly to this. The employer must indeed surely have been the party that had 'supervision, direction and control' as opposed to the party in the whole chain that was registered offshore by the promoters of the scheme. It seems to us that this is fundamental. Are you therefore looking into to how to resolve disputes as to whether someone had a UK employer and what test do you think should determine who the employer actually was and surely it should be? We believe that you should be and hope you will do so in your recommendations.

6. Addressing the clear unfairness of the Loan Charge ignoring the 7-year limit for record-keeping

To add further concern, it was also raised at the meeting that some people do not have records from their use of the schemes in question, due to it being beyond (and in some cases) well beyond the statutory seven-year period people are required to keep records. As was brought up at the meeting, there are individuals who know that HMRC's claims and demands are wrong but no longer have the paperwork to prove it. This is wrong and grossly unfair. The seven-year statutory period is there for a reason and one of the many unjust things about the Loan Charge is that it ignores this and allows HMRC to issue life-changing demands on the basis of estimates, knowing as it does that some people will no longer have the records to challenge them. A full, proper review would look into this. Within the restricted context of your review, we would at least urge you to take this into consideration and explain in your conclusions how you will do so.

How are you going to address this, when it is so clearly unfair for HMRC to make demands when people haven't got the records to challenge them? How is it fair to expect individuals to be able to argue their case when they won't have the details to be able to prove it?

As one APPG member said to you at the meeting, they had a constituent case where HMRC were asked to justify the tax bill they had issued and their response was "well, it's similar to what somebody else in your circumstances would have been paying". This really isn't acceptable. People should not be facing tax demands – let alone life-changing ones - on the basis of a comparison with others "in similar circumstances". This is a clear example of where the Loan Charge rips up the normal tax system and instead allows HMRC to issue demands based on nothing more than guesswork (and prejudice against those not working as employees on PAYE). This is another example of why the Loan Charge itself – as well as HMRC's conduct and calculations of people's liabilities – should all be subject to review. That notwithstanding, we ask that you do take this into consideration in your limited review and with regard to your recommendations regarding liability levels.

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7. Your statement that people on higher incomes are somehow less likely to have been victims of mis-selling

You said that you believe that people on the lower end of the income scale are "less sophisticated" and less likely to have access to tax advice. Whilst the latter may be the case for many, the reality is that the mis-selling happened to people across the income scale.

The fundamental point is not what income people were on, but the fact that they were victims of mis-selling and bad, dishonest or possibly even fraudulent advice and marketing. Many thousands of people at all income levels took and followed professional advice and assumed that they could rely on it. Considering that many Chartered Accountants were involved in recommending (and even actively selling) schemes, then it is understandable that people trusted the reliability and honesty of this advice and recommendation. It would be wrong therefore to make an assumption of more culpability on the part of those on higher incomes, when they were assured by accredited professionals (and in many cases actively encouraged to make use of the arrangements).

Ultimately all who were victims of mis-selling – and this was from a range of professionals, promoters, accountants, tax advisers, umbrella companies, recruitment agencies, employers – should be treated equally on that basis.

There is also the separate issue, as was raised at the meeting, that some people who may have been on medium or higher incomes at the time of scheme use are now on low incomes, either due to retirement, ill-health, unemployment, relationship/family breakdown etc. You inferred that you would take into account people's ability to pay, which is welcome, but we do also caution against making moral judgments based solely on income, when the fundamental issue (and part of the scandal) is that people were chronically mis-sold what they believed to be legitimate and complaint arrangements. We believe that the clear culpability of other parties should have been reflected in a review that allowed recommendations to pursue them, but within the context of your limited review, we urge that you reflect on the mis-selling – for all who suffered from it regardless of income – in recommending considerably reduced settlement demands.

8. You mentioned two promoters with regards to obvious mis-selling, but other promoters did too in almost identical ways

In our discussions about mis-selling (that Treasury Ministers, including both the Chancellor and the Exchequer, have explicitly referred to) you specifically mentioned two particularly high-profile promoters/groups.

We would certainly agree that there has been chronic and appalling mis-selling by the promoters/operators of these schemes, but from the evidence we have, this has been the case with *all* promoters across the board. Schemes were pushed on an industrial scale and didn't only involve promoters, but also tax advisers, Chartered Accountants, recruitment agencies and umbrella companies all of whom received financial benefits and incentives from recommending and signing people up to these arrangements. That is at the heart of the Loan Charge Scandal and is why we continue to believe that it is quite wrong both that those facing the Loan Charge are the only ones being pursued for the tax deemed to have been avoided and why it is wrong that your review excludes recommending that they are also held to account.

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It is also important to point out that whilst the reputation of Paul Baxendale Walker is very well known, from our evidence those who used schemes linked to him are a small proportion of those who are affected by the Loan Charge. There are/were many other promoters and groups. We have shared the information we have on the breakdown of promoter involvement, from the evidence submitted to the APPG and hope that is helpful.

9. Your comments regarding those who have settled and why they settled

One of our big issues of concern about the review is that it unfairly excludes all those who have settled to avoid the Loan Charge. Whilst we realise that this unfair exclusion was a decision by the Government, we did raise this with you and the patently unfair situation where those who have settled – and did exactly what HMRC and Treasury Ministers were urging and pressurising them to do – will end up having paid more, not less and on more punitive and unfair terms. This is a clear affront to natural justice and simply cannot be ignored (even if your very restricted review has been devised, by the Treasury, to cynically do exactly that).

As members said to you at the meeting, where does that leave those people who paid probably far more than they could afford already to reach a settlement, and now look and say to themselves, if I'd only held out longer, I'd have got a much more reasonable settlement.

When we asked about this, you responded that you do recognise the fairness point and that you are not ruling out making at least a comment as to whether to extend a recommendation. We urge you to do so as otherwise the Loan Charge Scandal will have yet another gross injustice imposed on those who did precisely what the state was pushing them to do. This cannot be allowed to be the case.

We are troubled by your assumption that those who have settled were in a much better position to do so than those who haven't and that those who settled were probably "better advised" than those who did not. This is absolutely <u>not</u> the case. We know from our own constituents that all of those who settled did so because they were threatened with having to face the Loan Charge itself and then to have to pay more (and much more) and to do so in one go. This is not an assumption, this is the reality and is why those who settled did so. People have stated that they were effectively coerced into settling under duress and for many the process was deeply traumatic, as well as profoundly unfair, because people were forced into an admission of guilt simply to be allowed to settle at all. Being forced by HMRC into making a false declaration of deliberate tax avoidance is absolutely outrageous and something a genuine review would have examined.

There is also the fact that many people relied on their advisers, accountants, tax advisers and umbrella companies/scheme operators ('employers') as to whether they should settle or not. We have evidence that shows some promoters whilst publicly advising their scheme users "it's a personal choice of whether to settle" were also releasing statistics suggesting that most of their scheme users had.

Also, the reality is that it was of course in the direct interests of promoters to encourage clients to settle with HMRC, as that would reduce the likelihood that they would be contacted and asked to pay unpaid tax, as an employer. By encouraging people to settle, they were also insuring that people admitted to their own liability, that would then avoid the possibility of them being deemed to be liable or facing demands. This also applies to accountants and tax advisers who had recommended schemes

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who also had a direct interest in people admitting liability (which as you know, settlement agreements unfairly and unjustly included). To give the impression therefore that this advice to settle was somehow in the interests of those individuals is at best naïve.

Overall, the reality is that those who settled with HMRC - on what your yourself have acknowledged were punitive terms - were subject to ***exactly the same mis-selling that Ministers have acknowledged.***

It is clearly against natural justice for these people – who did what HMRC was pushing them to do - not to have the same terms that you recommend people facing the Loan Charge should have.

It is therefore frankly inconceivable – and would be manifestly and grossly unjust to exclude those who have settled from your review recommendations. Even though the Treasury unfairly excluded those who have settled from the review, as a matter of simple natural justice, you surely cannot not conclude that they should not be subject to the same terms then offered to those who did not – and you thus should make a recommendation to this end.

10. Families of those who have taken their own lives facing the Loan Charge

At the meeting, we asked you if you were intending to speak directly with any of the families of those who tragically have taken their own lives facing the Loan Charge. You said that you didn't intend to do this and had some discomfort about doing so, as you feel it could cause more anguish.

Whilst we do of course understand that, we still feel that this testimony is important. Of course, if this was a full review/inquiry of the whole issue/scandal, then the families would be invited to give evidence of the clear harm that the Loan Charge appears to have done and that is another example of why we still believe there should a full inquiry into the whole matter. We did, though, appreciate your stating that you would be willing to speak to any of the families if they wished to speak to you. (even though, with the remit being only on those who still face the Loan Charge, as opposed to a proper review/ inquiry, they may understandably feel that it doesn't make sense to speak with you).

11. **Your comments about the review timescale and your statement that the draft report will be largely written before the call for evidence deadline has passed**

We were very concerned, considering that the call for evidence is open till the end of May, that you stated that you are working on the basis that you will have a solid draft report "by the end of May into early June". How can you have a solid draft report when you will only just have had the final evidence submissions and certainly will not have had the chance to look at evidence that has come in at the end of May?

You also stated that you think that probably by the time we get into May, you will have received as much evidence as you are likely to get. This is also concerning. The original deadline was the end of April even though the call for evidence was only published/announced on 28th March 2025. As you know, we specifically asked that you extend the original deadline you set which we felt strongly did not give people affected enough time to compile their evidence and make a submission. We were therefore very pleased when you announced that you were extending the deadline by a month, to the end of May, but if you are actually now completing your draft report (and working on the assumption

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that you will have received nearly al the evidence you are going to) then this undermines that time extension.

This doesn't help with contradicting the perception that the review outcome is largely pre-determined and that you may have already effectively agreed a broad framework for a resolution with the Government. Please can you explain your comments and reassure us that you will not in fact be writing the draft report until after the call for evidence has closed and all evidence is in.

12. Your ability to make recommendations that are not directly in scope of the Terms of Reference

We note that when it came to discussions about learning lessons for the future and taking action against promoters and professionals recommending and mis-selling disguised remuneration schemes, it was suggested and you inferred that that you might be able to make recommendations that were outside of the very limited remit of the review.

We realise that this is a tricky matter for you, having accepted the current terms of reference~~.~~ (and from previous comments from James Murray, that you were actually involved in writing them). Nonetheless, we would urge you, where you feel that recommendations are needed (such as regarding people who have settled, people with pre-2010 enquiries as well as action against promoters and professionals involved in mis-selling) to do so. We would be interested in your views on tackling the increased use of disguised remuneration schemes and how you would stop this (including by criminalising the mis-selling of schemes that have not been approved by HMRC). We do understand that you may wish to make such recommendations post report, but either way, we'd be keen to hear from you and discuss this further with you in the future.

We feel very strongly that there should be action against promoters – going forward but also <u>retrospectively</u>. If it is right for the Government/HMRC to retrospectively demand disputed tax from individuals, by circumventing the normal legal process with the controversial and retrospective Loan Charge, then surely it is right to do the same for the promoters and introducers of these schemes, to seek at least a proportion of the tax deemed to be due from them.

<u>Next Steps/Further engagement with the APPG</u>

As stated at the meeting, we would appreciate it if you would come back to meet the APPG once your report has been published, so we can discuss the conclusions then. We note your caveats that it is for the Minister/Government to decide whether to implement your recommendations and that your recommendations are limited by the insistence of the Minister that they do not "undermine the fiscal position" (despite it being far from clear what that actually means in practice). Nonetheless, we hope that we can discuss your recommendations with you at the appropriate point.

Finally, as was suggested and agreed, we have circulated the email address of the review to all APPG members so that MP members can pass this on to affected constituents, if they wish to encourage them to submit evidence from their own cases.

Once again, we thank you for attending the meeting and giving APPG members the opportunity to raise points with you.

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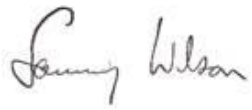
contact@loanchargeappg.co.uk

We look forward to your response.

Yours sincerely,



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Co-Chair

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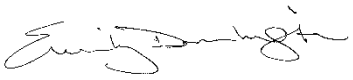
Co-Chair



Emily Darlington MP
Vice-Chair

Office of Sammy Wilson MP, House of Commons, London, SW1A 0AA
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