



All-Party Parliamentary Loan Charge Group

www.loanchargeappg.co.uk

HMRC's behaviour and their pursuit of individuals impacted by the Loan Charge

June 2019

This document was researched and written by the Loan Charge APPG. The Loan Charge APPG Secretariat is staffed and funded by the Loan Charge Action Group.

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Introduction

The All-Party Parliamentary Loan Charge Group (Loan Charge APPG) was established to bring together cross-party parliamentarians from both Houses of Parliament, who have concerns about the nature and impact of the '2019 Loan Charge', which came into force on the 5th April 2019.¹

The Loan Charge APPG is clear that people should pay the right amount of tax and we believe the Government should clamp down on tax evasion and properly resource HMRC to do this. We also believe that the Government should prospectively close any loopholes that allow for unacceptable avoidance. However there is increasing concern about the Loan Charge in terms of its fairness and impact and the purpose of the Loan Charge Inquiry was to look into this.²

With the passing of the Finance (no.2) Act 2017, the Government introduced a Loan Charge on all employment-related loans made since 1999. It has the effect of being a 45 percent non-refundable charge on all loans advanced during this period, unless the individual agrees to pay upfront a figure calculated by HMRC, regardless of whether any such tax was legally due at the time.

The charge is effective from 5th April 2019: anyone who has ever been employed through such a structure will face a retrospective charge in the 2018-19 tax year which is payable by January 2020.

HMRC and the Treasury have repeatedly stated that HMRC are helpful and have a sympathetic approach to the collection of the Loan Charge and Settlement negotiations.

MPs have been given this impression.

There is a growing body of evidence which suggests that the reality is very different to what HMRC and the Treasury would like MPs and the public to think.

We have identified a number of key themes that have been observed in taxpayers' interactions with HMRC. The themes are grouped under 9 headings:

1. Clearly and wholly unaffordable Time To Pay (TTP) offers
2. Aggressive communication
3. Threats of Bankruptcy
4. Communications arriving at a time of maximum stress and distress
5. Offering unregulated financial advice
6. Unreasonable delays in HMRC's responses
7. Inconsistencies in HMRC calculations between the settlement contract and the calculation appendices
8. Punitive rate of interest on Time to Pay of 4.25%
9. Unreasonable contractual terms for settlement

¹ government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans

² <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/05/Loan-Charge-Inquiry-Report-April-2019-FINAL.pdf>

1. Clearly and wholly unaffordable Time To Pay (TTP) offers

This is the topic that appears most frequently when LCAG members discuss settlement offers received from HMRC. HMRC and the recently departed First Minister to the Treasury, Mel Stride MP, have consistently claimed that HMRC “take a measured, proportionate and sympathetic approach”³. We have extensive evidence of HMRC demanding sums of money that are wholly unaffordable.

Example 1 shows an individual who earns circa £30,000 per year, which equates to taking home approximately £2,000 per month; HMRC are demanding £3,511 per month over a 5 year TTP agreement. It would be obvious to any reasonable person that an individual cannot sustainably pay more than their income every month, even before taking day-to-day living costs into account. This individual’s partner also has a similar demand, along with a similar level of income.

Forward Interest Calculation based on £3510 monthly payments	
Forward interest = Half of: Protected balance paid by instalments (£0) x Forward Interest Rate (4.25%) x months (0)/12 months in year	
Forward interest	£0.00
Total settlement offer	
Protected tax	£0.00
plus Interest on protected tax	£0.00
plus Forward interest	£0.00
plus Unprotected tax	£207,091.38
Total settlement offer	£207,091.38
less Payments on account already made	£0.00
less First instalment	£0.00
Amount to be paid after first instalment	£207,091.38
Total duration of instalment plan	
60 months	
Payment plan	
Payments on account already made	£0.00
First instalment	£0.00
Second instalment	£3,453.38
Remaining instalments 58 monthly payments of £3,511.00	£203,638.00
Total	£207,091.38

Example 1

³ <https://hansard.parliament.uk/Commons/2019-05-21/debates/A0EB47F0-397A-4039-9C6B-1C2D1CB6C1A0/LoanCharge#contribution-08D87974-D9D4-4543-9891-35D0614F1999>

Example 2 shows an individual who has no source of income, a fact that HMRC are aware of. Their settlement offer includes a ridiculous 5-year TTP agreement of £6,224 per month – this would require a gross salary of £122,000 per year just to service the TTP agreement.

interest charges. If you would like to pay over a shorter period please confirm the period required. Please note that the shorter the period, the lower the forward interest charges will be. Should you require more than 5 years please advise me of the period required. Please be aware that we will need to ask for further information but will ensure we keep that to a minimum.

Terms of Offer

£6,224.00 to be paid by 05/4/2019 by you.

£364,915.00 to be paid by 59 monthly instalments of £6,185.00 each, on or before the last day of each succeeding month, the first such instalment to be paid on or before the last day of the month next following that in which the instalment of £6,224.00 becomes due until the whole of the £371,139.00 has been paid

Please note: If you do decide to settle, any APNs issued to you will remain due and payable until settlement has been agreed as either party can withdraw from the settlement process at any point before settlement is agreed. Once settlement has been agreed any payments already made against the APNs will be set off against your settlement liability. Please confirm what APNs you have paid so far and if you are happy for these amounts to be set-off against any potential settlement.

If you have any questions in relation to this letter you can contact the team on 03000 517775.

Please note that I have enclosed a copy of this letter should you wish to forward it to your agent.

Whichever method you choose to contact us about this check, you need to quote the case reference CFSS- [REDACTED] and any other references shown above. If you write to us please use the address shown above. If you send documents you must tell us if you want them returned as we may securely destroy them after 90 days.

Yours sincerely

Example 2

We have also seen evidence that HMRC are wholly unreasonable and irrational in their settlement dealings. **Example 3** shows correspondence from HMRC stating that a proposed TTP agreement has been rejected by HMRC as the officer does not believe the individual has the means to service the agreement – HMRC then go on to demand the entire payment in full within a short timescale. It is unclear how the HMRC officer thinks that this is 'a measured, proportionate and sympathetic' conclusion to the matter; if the TTP proposal is not affordable, then how could an immediate lump sum payment be afforded?



HM Revenue & Customs
Counter-Avoidance Team 2
S0694
NEWCASTLE
NE98 1ZZ

Phone 03000 587 386
Monday-Thursday 8:30am-5:00pm
Friday 8:30am-4:30pm

Fax 03000 526 486

Web www.gov.uk

Date 7 April 2017
Our Ref Notice 2/PA
NI number
UTR

Dear _____

Rejection of payment arrangement proposal for the accelerated payment

Scheme Names: _____
Tax years ended 5 April 2013
Total amount due £8,282.35

I refer to our telephone conversation of 7 April 2017, in which we discussed a payment arrangement for the accelerated payment notices shown above. Unfortunately, we did not agree an acceptable arrangement. This was because the information you provided as part of our conversation regarding income and expenditure highlighted that you were not in a financial position to repay over the proposed period. Accepting such a proposal would put you at a financial detriment increasing possible hardship. The debt will pass to debt management team once the due date has passed. You can contact debt management on 03000 589 441 should you wish to discuss your options with them..

The total amount, £8,282.35, is due to be paid on or before the individual due dates shown on **each** notice. If you don't pay in full and on time, you will be liable to penalties. Any such penalties would be payable in addition to the amounts due. The original accelerated payment notices show details of any penalties you will be liable to.

We will accept any payments that you are able to make. If you want to discuss the payment arrangement proposal further please contact us **before** the due date.

How to pay

We recommend that you pay by online or telephone banking (Faster Payments), CHAPS or Bacs. For details of all the ways you can pay, go to www.gov.uk and search for 'pay taxes penalties and enquiry settlements'.

Whichever way you pay, please make sure you quote the payment reference shown on each accelerated payment notice.

Information is available in large print, audio and Braille formats.
Text Relay service prefix number – 18001



2. Aggressive communication

HMRC have a duty to treat all taxpayers fairly, it is specified in HMRC's code of conduct that officers should assume that all individuals are acting in a truthful and honest manner. We have evidence that HMRC often communicate with individuals in a manner that falls far short of this expectation.

Example 4 relates to an individual negotiating a TTP arrangement for Accelerated Payment Notices (APN) raised by HMRC on the basis of a disputed tax liability for the individual's use of loan arrangements. This example includes the threat that the TTP arrangement would be cancelled and HMRC's debt management team would "pursue the full debt via various methods". There is also a veiled threat that the HMRC officer has made himself aware that the individual has assets that could be used to fund a settlement.

From: <[REDACTED]>
Date: 6 March 2019 at 12:41:14 GMT
To: [REDACTED]
Subject: RE: Your e-mail of 15 February 2019

[REDACTED]

Please find attached the tax calculations that I was going to send by post. You will find that the majority of the increase in liability appears in the 2015/16 & 2016/17 tax calculations. I have included the interest calculation up to 30 September 2018 on each of these additional charges. As you are aware HMRC has offered to resolve this matter by allowing payment of the full amount, plus interest, over a 7 year period. This is a concession by HMRC as there is no statutory right to delay payment of tax beyond the original due date, which in your case goes back to 31 January 2014. I am aware that your original offer was £500 per month (which would have taken over that 20 years to clear) and that you increased that offer to £1,107 to clear the provisional total over a 7 year period. Unfortunately you had not taken forward interest into account and your offer would not have cleared the debt in 7 years as a result. As previously stated, Forward interest is charged in all payment arrangements agreed by HMRC to compensate for the extra risk and cost involved in an instalment offer. HMRC also has to have a reasonable expectation that you can maintain such a payment plan and the details that you have supplied does not supply such an assurance. I must make you aware that if HMRC enters into an arrangement, you will need to sign a contract between yourself and HMRC. We will expect you to adhere strictly to the terms of this contract and make payments on time. In the event of a missed payment, my colleagues in Debt Management would cancel the whole arrangement and would pursue the full debt via various methods. HMRC will consider granting an arrangement that extends beyond 7 years if we have information that would justify such a decision but you appear reluctant to supply this. Having reviewed your Self Assessment tax returns, I am aware that you have investment in property.

I accept that you do not wish to supply me with the information that I have requested but I do need you to submit an offer that is acceptable.

Please submit a new offer as soon as possible because without an arrangement, you run the risk of having the 2019 Loan Charge raised.

I look forward to hearing from you.

Yours sincerely

[REDACTED] Higher Officer |
Postal address: | HM Revenue & Customs | Counter Avoidance | S0914 | Newcastle | NE98 1ZZ
[REDACTED]

Example 4

HMRC representatives have repeatedly stated that no one will be disadvantaged by the Loan Charge as long as they are in discussions with a view to agreeing settlement before 31st August 2019. However, HMRC are routinely contacting individuals to pressurise and coerce them into settling by issuing demands with arbitrary deadlines. **Example 5** includes the threat that if settlement is not reached by 2nd July 2019, then the Loan Charge must be paid – i.e. that HMRC will be withdrawing from settlement negotiations prior to their publicly stated deadline.

you would not get relief from any charge arising under the Loan Charge for any years or schemes not included in the settlement.

HMRC is considering the offer you have already made and we will respond in due course, but, in the meantime, I thought it may be helpful if I provided you with calculations which detail your liability (tax and interest). Forward interest has not yet been calculated. If you want me to consider a revised instalment offer, please let me know on the enclosed Settlement Options form (CL5) and complete the Instalment Information Form (CL11) and return by email to cl.resolution@hmrc.gsi.gov.uk or by post to the address shown at the top of this letter.

Other points

HMRC cannot advise you whether or not you should enter into any settlement. You may wish to take professional advice, or show a professional adviser a copy of this letter. I have sent a copy of this letter to your tax adviser, [REDACTED]

Next steps

Please complete the enclosed Settlement Options form (CL5) and return it to me by **2 July 2019**, along with the form I have asked you to complete if you want me to consider an instalment arrangement on different terms.

If we do not hear from you

If I do not hear from you by **2 July 2019**, you will no longer be able to settle under the terms published in November 2017 and you should pay the loan charge and declare the income on your tax return along with your other income. You should also report the additional information required by 30 September 2019. You can read more about the loan charge and your obligations at <https://www.gov.uk/guidance/disguised-remuneration-settling-your-tax-affairs>.

Example 5

HMRC have also shown evidence of acting outside the law, requesting information from taxpayers that they are not permitted to request. **Example 6** is a particularly powerful illustration of this, where the HMRC officer has requested a copy of a taxpayer's mortgage application to support her assertion that the individual has undeclared income.

While a tax enquiry opened under section 9A of the Taxes Management Act 1970 allows HMRC to enquire into anything contained in the taxpayer's return, the officer even admits that a mortgage application form is outside the statutory records required under TMA 1970. How would an ordinary unrepresented taxpayer know this?


HM Revenue
& Customs

WTT
20 Fitzroy Square
LONDON
W1T 6EJ

HM Revenue & Customs
Counter-Avoidance
PO BOX 177
Bootle
L30 4TZ

17 OCT 2016

Phone 03000 587020
Fax 03000 587 501/2
Web www.gov.uk

Date 11 October 2016
Our ref [REDACTED]
NI number [REDACTED]
Case Ref [REDACTED]

Dear Mr Thomas

[REDACTED] - Check of Self-Assessment tax return year ended 5 April 2014

Thank you for your reply dated 23 September 2016, including details of the total loans received of £ [REDACTED]

With regards to my request that your client provides a copy of his mortgage application I have consulted with my Technical Inspector, who is in agreement that this request is relevant.

As stated in my letter [REDACTED] 2016, the Departments view is that whilst a mortgage application form in most instances does not form part of a person's statutory records, our information powers (CH23220 onwards) extend beyond these to any document or information that is reasonably required for the purpose of checking a tax position.

To reiterate it is reasonable for me to question the funding and to request a copy of [REDACTED] mortgage application, given that on the [REDACTED] purchased Apartment [REDACTED] [REDACTED] for £ [REDACTED] when [REDACTED] only declared income of £ [REDACTED] on [REDACTED] tax return. Hence I consider this document contains information relevant to [REDACTED] tax position and request that you forward this by the 11 November 2016.

Yours sincerely

[REDACTED]

HMRC Officer

Example 6

Of related concern is HMRC's seeming victimisation of individuals. **Example 7** shows correspondence of a concerned wife after her husband has been subjected to repeated fraud investigations by HMRC and directly speaks to this issue and the resultant impact on the individual's mental health.

From: [REDACTED]
Sent: 18 May 2019 18:20
To: esther.mcvey.mp@parliament.uk
Cc: Contact@LoanChargeappg.co.uk
Subject: [REDACTED]

Dear Esther,

I am writing to you in confidence as I am extremely worried about my husband [REDACTED]. I believe [REDACTED] made you aware of yet another phone call from HMRC fraud yesterday, just like the officer last month he introduced himself as a vat inspector but upon further questioning he is in fact from HMRC fraud.

I'm not sure if you are aware that Mr [REDACTED] from HMRC fraud closed his enquiry approximately 3 weeks ago. Mr [REDACTED] said he was satisfied with everything [REDACTED] promptly provided him. The officer yesterday who is also based at HMRC fraud in Manchester said he was aware of the previous 2 investigations, however, he stated this is now a new enquiry.

[REDACTED] is exhausted with HMRC relentless victimisation and bullying tactics. A couple of [REDACTED]'s employees have contacted me to say how worried they are about Jonathan's state of mind as they have seen him getting very upset at times in work.

Angela did mention on Tuesday you are seeing lots of instances of HMRC bullying tactics with other constituents in similar situations to [REDACTED]. [REDACTED] has been to his GP and is currently on medication which has been helpful but yesterday after the phone call from HMRC fraud he became extremely upset and my concern for him was great. I am sure you will agree that HMRC behaviour is now intolerable and something urgently needs to be done.

I am writing to you and the appg as I am at a loss what to do next or how to help the situation we find ourselves in. Jonathan and I attended a meeting on Tuesday with Angela as [REDACTED] wanted to demonstrate to Angela how he acted in good faith on a chartered accountants strong recommendation 8 years ago, the evidence he gave was irrefutable.

Kind regards

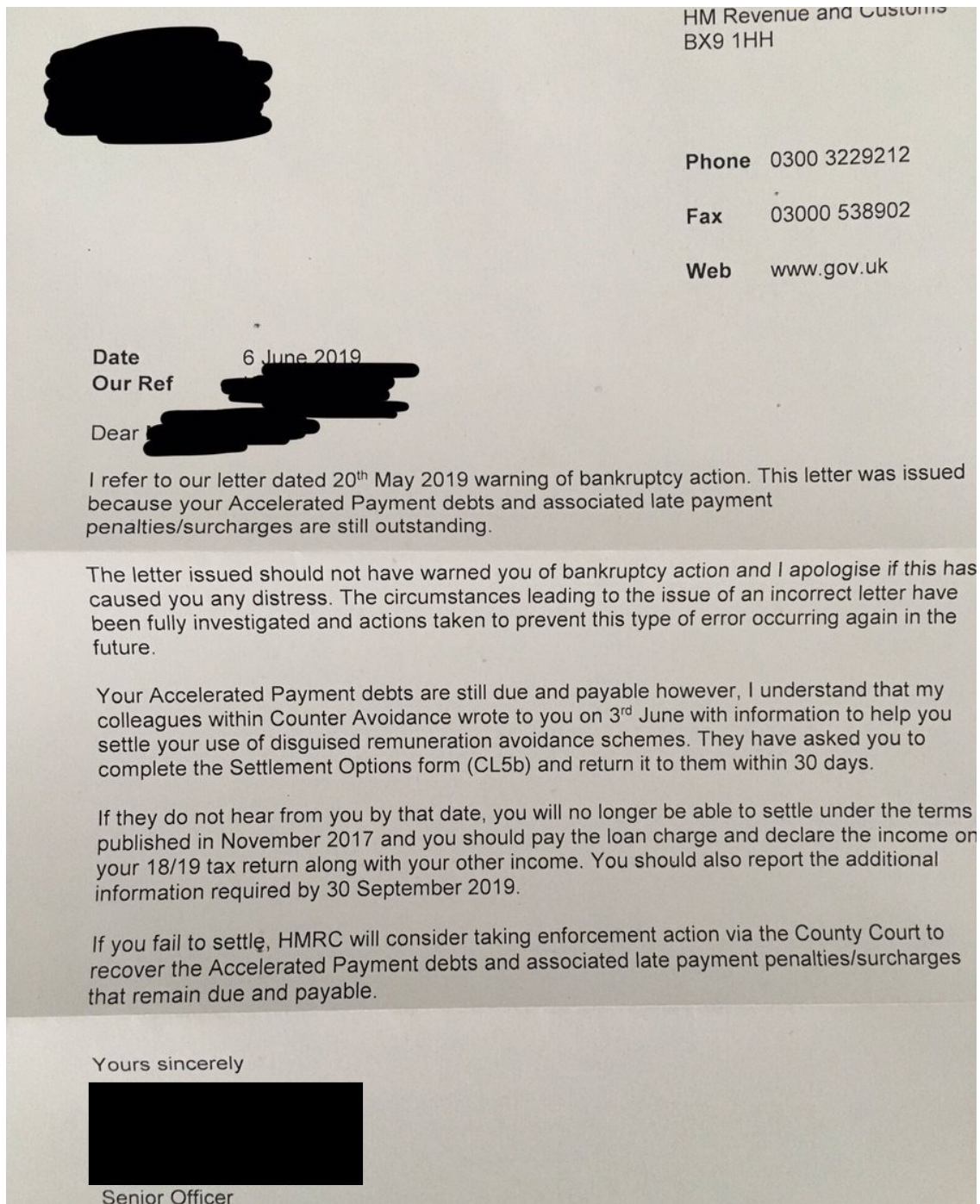


Sent from my iPad

Example 7

3. Threats of Bankruptcy

HMRC and Treasury officials have repeatedly stated that they only pursue bankruptcy in rare cases and that they, supposedly generously, “do not wish to make people bankrupt”. The truth of the matter is that HMRC appear worryingly keen to commence bankruptcy proceedings. In **Example 8** HMRC’s Debt Management department [DM] wrote to an individual over claimed APN debts – having threatened bankruptcy, DM acknowledged that they should not have as the individual still being in discussion with the Counter Avoidance department [CA] regarding settlement. The same letter then goes on to say that if settlement is not reached with CA, DM will take action via County Court - which would likely lead to bankruptcy proceedings. HMRC are not true to their word on bankruptcy and a lack of coordination within HMRC indicates they are a government department which is out of control.



Example 8

The reality of bankruptcy threats is further shown in **Example 9**. This individual was given 11 days from the date of this letter before HMRC would start bankruptcy proceedings.

HM Revenue & Customs

Debt Management
Accelerated Payment Team
Debt Enforcement – Accelerated Payment
HM Revenue and Customs
BX9 1HH

Phone 0300 3229213
Web www.gov.uk

Date 20 May 2019
Our Ref APTPE K 1636247537

Dear Mr [REDACTED]

Warning of bankruptcy

Please read this letter – it can help you avoid bankruptcy.

Your HMRC debt, shown on the attached statement, is £70,900.55. We will continue to charge interest until you pay in full.

Despite reminders, you have not paid.

If you don't pay or phone us by **31 May 2019**, we'll apply for a bankruptcy order against you for this debt.

If you're made bankrupt:

- you risk losing your assets, even your home
- your bank account may be frozen
- you may incur legal and other costs

For more details about bankruptcy, please see the enclosed information sheet.

What you need to do

There is still time to sort things out, but you need to act now.

If you haven't paid in full
You must **pay in full now**, quoting our reference number. For details of how to pay, go to www.gov.uk/topic/dealing-with-hmrc/paying-hmrc.

If you have already paid in full
You need to phone us now to tell us. Our phone number is at the top of this letter. We'll need proof of payment.

If you cannot pay immediately
You need to phone us now to tell us. Our phone number is at the top of this letter.

Example 9

4. Communications arriving at times of maximum stress and distress

A strange and concerning pattern has emerged with regard to the timing of correspondence; numerous examples of HMRC contacting individuals at times when the impact would be expected to cause the greatest stress. **Example 10** was sent on the individual's birthday (3rd April 2019); suspicions are raised that the timing of this correspondence is deliberate as the individual contacted HMRC to discuss settlement on 27th September 2018, a full 6 months prior.

HM Revenue
& Customs

Counter Avoidance
HM Revenue and Customs
BX9 1LW

Phone 03000 534226
Fax 03000 533 126
Email cl.resolution@hmrc.gsi.gov.uk
Web www.gov.uk

Date 3 April 2019
NI number
UTR
Case Ref
Dea

Thank you for contacting HMRC on 27 September 2018 to discuss settling your involvement in Contractor Loans avoidance. I am sorry for the delay in sending you a full reply.

Income tax

In the following table, you received Contractor Loans in the years shown that do not have an open enquiry or an assessment and HMRC is now outside the time limits to make an assessment ("unprotected" years). I enclose calculations showing the income tax and NICs charges arising on your Contractor Loans in these years. The income tax and NICs figures are summarised below.

Tax Year	Scheme	Loan	Income Tax Due on	NICs Due
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Example 10

Correspondence from HMRC is also routinely received on a Friday, so individuals' weekends are ruined by worrying about the content with no ability to contact either HMRC or a tax adviser. We have seen evidence of bankruptcy notices arriving in the days immediately before Christmas and bank holidays⁴. In doing this HMRC forces additional worries on the individual, causing additional stress. Days that are meant to be periods of happiness and celebration are destroyed while the individuals are unable to contact HMRC, their own tax advisor, or their MP to discuss the matter.

⁴ LCAG Press Release 21/12/2018 - <https://www.hmrcloancharge.info/lcag-press-release-21st-december-2018/>

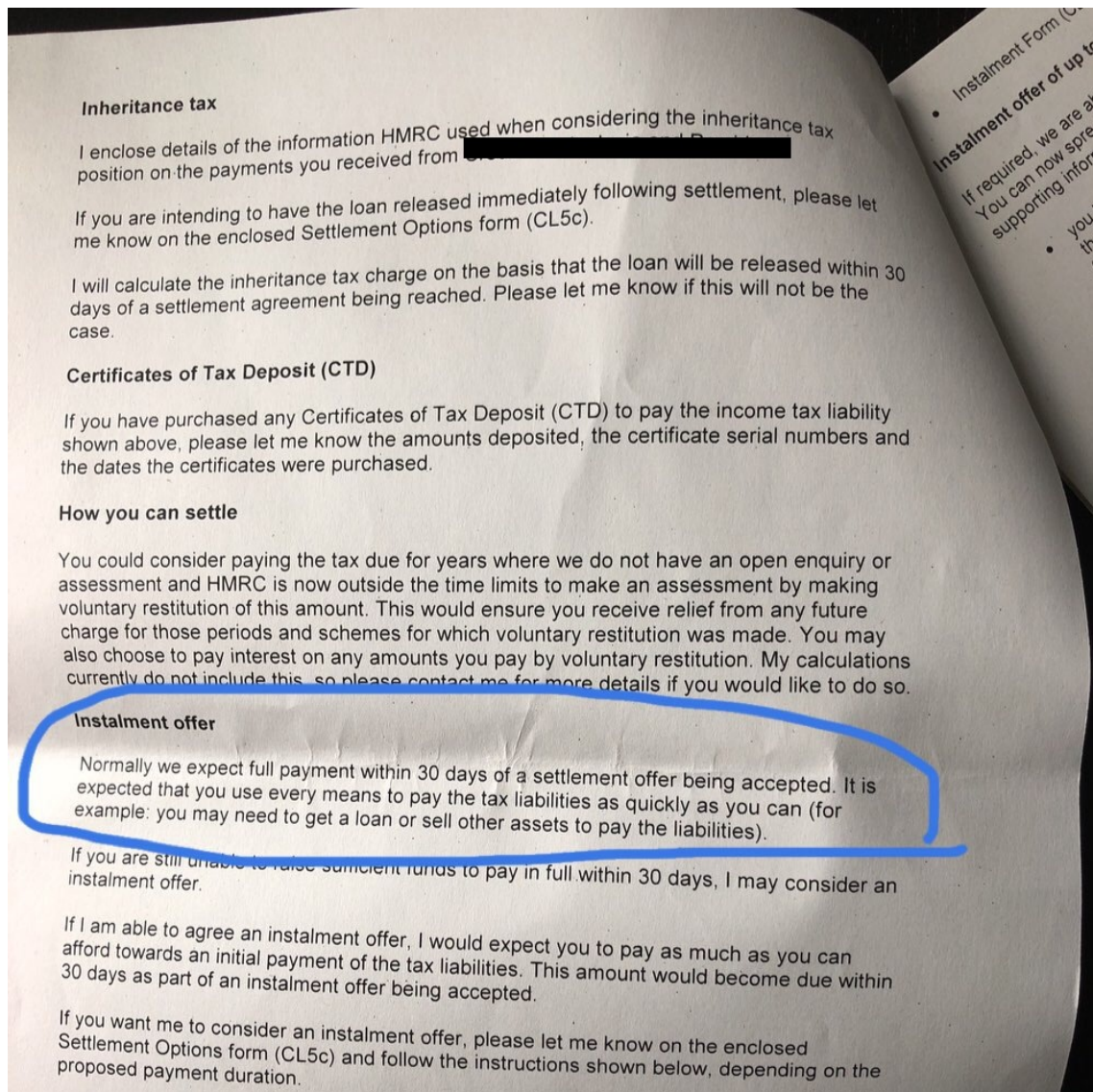
5. Offering unregulated financial advice

HMRC are not registered or authorised by the Financial Conduct Authority (FCA), but there is evidence that as part of their discussions around settlement HMRC are offering debt advice. This is not permitted.

The Loan Charge APPG has already written to the FCA with regard to this, but has not yet received a reply.

It is not appropriate for HMRC, whose role is to collect tax, to tell people that they should attempt to take out loans to pay HMRC's demands.

Example 11 includes the expectation that this individual should attempt to take out a loan to pay the sums claimed by HMRC; HMRC should not be offering such advice.

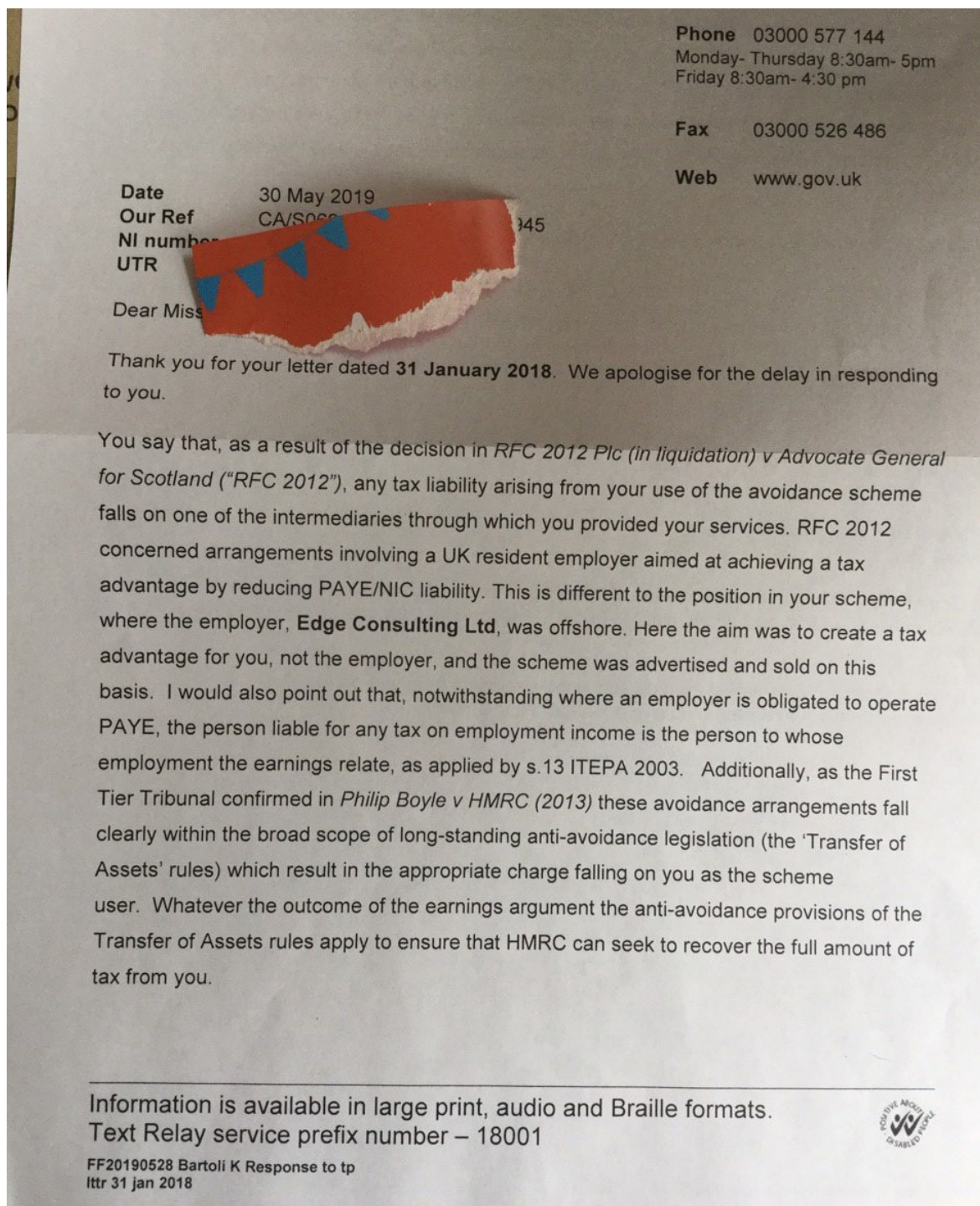


Example 11

6. Unreasonable delays in HMRC's responses

Many individuals facing the Loan Charge have encountered unreasonable delays in receiving replies from HMRC. The uncertainty faced by these individuals, for periods of ten months or even longer, along with the inability to make any future plans compounds the hardship and stress of their situation.

In response to a letter from an individual on 31st January 2018, **Example 12** shows a response from HMRC dated 30th May 2019 – fully 16 months after the initial correspondence.



Example 12

7. Inconsistencies in HMRC calculations between the settlement contract and the calculation appendices

In many cases, individuals have received settlement figures that were inconsistent with details that HMRC requested from them and which were submitted by the individual. Sometimes figures differ between one piece of HMRC correspondence to the next. Many individuals have reported basic arithmetic errors in settlement calculations and the APPG Secretariat discovered a widespread and still apparently unresolved issue regarding the treatment of leap years.

Getting errors corrected by HMRC is a laborious task that involves many phone calls and letter exchanges until consistent figures are received – significantly increasing the stress to the individual when an arbitrary deadline such as the Loan Charge is looming.

As shown in **Example 13** whilst discussing settlement, HMRC statements showed a difference of £16,181 in payments recorded against APNs. Unsurprisingly it was the later correspondence from HMRC that had the lesser amount, resulting in them demanding a much higher sum for settlement.

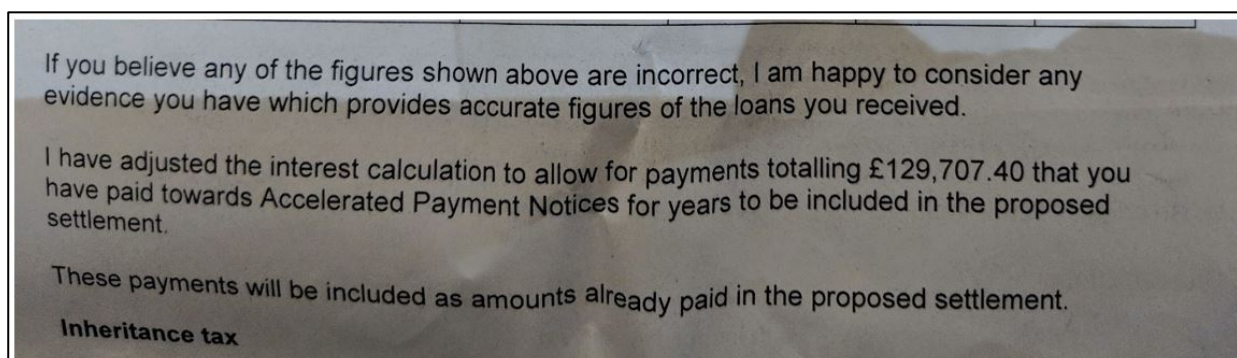


Figure 1 - Letter dated 8th April stating APN payments totalling **£129,707.40**

Total Payment Required	£ 181,245.93	Incl 0.14 adjustment
	£ 112,526.26	Payments APN
	£ 6,531.68	SA Credit 31/01/2018
	£ 62,187.99	BALANCE
TTP >50k	£ 6,066.00	FWD int
Lump Sum	£ 3,000.00	
PM	£ 100.00	
*doesn't include Grange Dividend £25426.40 or £16950.38 Hamiltons haMILTONS 2010/11 cleanse £47278.43 9/12/10 to 5/4/11		
IHT result		
Avenue	S65 No Charge Below Threshold	
Castlemaine	S65 No Charge Below Threshold	

Figure 2 - Letter dated 16th April 2019 stating APN payments made by me total **£112,526.26**

Example 13

We have also seen HMRC claim that 'closed' years are in fact 'open' during settlement discussions and thus claiming additional interest, and forward interest, on settlement calculations and TTP agreements. **Example 14a and b** shows this. Statutory taxpayer time protections are fundamental to the rule of law, and whether a year is open or closed is a critical piece of information in support of this.

For the ordinary unrepresented taxpayer, unable to call upon specialist tax knowledge, it is difficult to understand how they would identify errors in HMRC's calculations. It is very likely that some people are being forced to accept figures that are incorrect and which they could not possibly identify the inaccuracies which HMRC themselves have introduced.

Settlement Pack received >

to cl.resolution ▾

Dear [REDACTED]

WITHOUT PREJUDICE

Thank you for your letter dated 8th February 2019.

Having reviewed the complete settlements pack I have a few points:-

1. An enquiry was never opened into tax year 2009/10 so interest should not be applied to that year, as far as I understand.
2. I made a mistake submitting the loan values for 2010/11. the actual value for Hamilton should be £88,983 not £58,288. Apologies.
3. Please can you confirm how much tax you have recovered from the employer, and where this has been credited against the calculation?
4. How do I assign expenses against these calculations, for items such as travel?

Yours sincerely.,

Example 14a

Settlement Request > Inbox x



[REDACTED]@hmrc.gov.uk

14:46 (4 hours ago) ☆ ↩ ⋮

to me ▾

Dear [REDACTED]

Thank you for your Email of 5/3/2019 and I apologise for the delay in replying.

- 1) I can agree there is no open enquiry for 2009-2010. The interest for this year has been cancelled.
- 2) I have updated the 2010-2011 Settlement & interest Calculation for the correct Hamilton loan of £88,983.00.
- 3) No tax is recovered from the Loan Schemes.
- 4) If you wish to claim expenses, please provide details of what you wish to claim and we will consider them.

Updated Settlement and Interest Calculations are attached.

I note that at today's date you have a credit on your Self Assessment record of £10,944.81. Please let me know if you wish this credit to be allocated against the Settlement.

Thank you.



CA | HM Revenue & Customs
BX9 1LW

emails from HMRC

Example 14b

8. Punitive rate of interest on Time to Pay of 4.25%

The interest rates charged on TTP arrangements include a 1% surcharge over HMRC's normal late-payment interest rate, which is claimed to be "compensation" to HMRC for the risk they claim to carry during TTP arrangements. TTP arrangements that include settlement for "Open" years are calculated with this so-called forward interest on the amounts demanded by HMRC, which results in individuals paying excessive amounts compared to the actual sums demanded. We have not seen any evidence of HMRC acting sympathetically in any way with regard to these interest charges.

It should also be noted that the TTP agreement is agreed as an alternative to immediate enforcement of the tax demand, which would likely result in the bankruptcy of the individual and loss of at least part of the tax demanded. It is therefore worth considering whether HMRC are in fact taking a risk by agreeing to a TTP agreement at all.

9. Unreasonable contractual terms for settlement

Reaching settlement with HMRC on these tax demands is not simply a case of paying the money and getting on with your life. HMRC's settlement terms (an example is posted below) are egregiously one-sided and attempt to avoid scrutiny or challenge in the future should HMRC's behaviour subsequently be found unlawful.

The individual, under the threat of the Loan Charge is effectively forced into signing this so-called "voluntary settlement" – no court case has proven that the money is due. Yet, as shown in **Examples 15 and 16**, HMRC require the settler to "admit your failure to meet statutory obligations". This potentially incriminates the person as a "serial tax avoider". The individual is also required to declare that they will not pursue HMRC even if HMRC's tax opinions are later defeated in court. To be clear, a court, even the Supreme Court might rule that HMRC were entirely wrong on a basic principle that blows apart their arguments regarding the taxes they claim are due, but individuals who had already settled would find that they had already signed away their rights to financial redress from HMRC.

Between this and the Loan Charge the victim is being forced to make a false confession and to give up their common law rights of recourse to the courts. All for an unproven liability.

TO THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

The tax in the statements in Schedule 1 is unpaid, wholly or in part, because of my failure to meet all my statutory obligations.

If the terms of this offer are accepted, it is confirmed that the agreement (the "**Agreement**"):

- (a) is within section 554Z5(4)(b)(ii) Income Tax (Earnings and Pensions) Act ("**ITEPA**") 2003;
- (b) is within paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017;
- (c) only applies to the payments listed in Schedule 2.

I acknowledge that the Agreement may constitute a relevant defeat for the purposes of the serial tax avoidance legislation at Schedule 18 to the Finance Act 2016.

The terms of this offer do not apply to sums or payments made to or in respect of me in connection with disguised remuneration schemes, whether in the forms of loans or otherwise, that are not listed in Schedule 2 or to any Inheritance Tax that may arise in the future.

Example 15

If any part of the Settlement Amount is not paid within 14 days of the due date, HMRC may:

- (a) seek recovery of the outstanding balance, together with interest, under the Agreement; or
- (b) treat the Agreement as terminated.

Where HMRC treat the Agreement as terminated, I will be treated as never having agreed terms with an officer of Revenue and Customs for the purposes of:

- i. paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017; and
- ii. section 554Z5(4)(b)(ii) ITEPA 2003.

Any payments made under the Agreement prior to it being terminated may be treated as earlier charge paid amounts within the meaning of section 554Z11C ITEPA 2003.

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I undertake not to take any action with a view to obtaining repayment from HMRC of any part of the Settlement Amount including but not limited to making a claim under:

- a) Schedule 1AB of the Taxes Management Act 1970; or
- b) common law.

Example 16

Conclusion

The inescapable conclusion from the evidence presented above is that there is a total disconnect between what HMRC say, both publicly and privately to parliamentarians, and the reality as experienced by taxpayers. HMRC are clearly struggling to cope with the volume and the complexity of settlement requests despite having had 20 years to investigate and understand the structure of these arrangements and the application of the tax law to them. Not to mention three years notice of the specific Loan Charge deadlines in which to set up the settlement processes.

HMRC claim to have always been clear about the arrangements being against the spirit of the law, but when asked to tell a taxpayer what the “spirit of the law”, as HMRC see it, requires them to pay, they need months to respond. HMRC make demands of taxpayers in terms of response times that they themselves are totally unable to achieve. They demand records from taxpayers to which they have no legal right to receive, but when the taxpayer asks for information on whether other parties may have already settled the tax (very pertinent in the circumstances), HMRC cite taxpayer confidentiality. When asked to supply PAYE records from up to 20 years prior, HMRC state that they are not legally required to keep such old records – how do HMRC then expect taxpayers to retain records well beyond such statutory requirements.

All in all, the picture is one of a organisation that is out of control and focused solely on an objective of maximising revenue collected, by whatever means necessary, not on behaving fairly to taxpayers or on collecting the correct amount of tax.

Loan Charge APPG

June 2019