



All-Party Parliamentary Loan Charge & Taxpayer Fairness Group

www.loanchargeappg.co.uk

Rt. Hon. Boris Johnson MP
Prime Minister
10 Downing Street
London
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Rt. Hon. Rishi Sunak MP
Chancellor
11 Downing Street
London
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18th June 2021

Dear Prime Minister and Chancellor,

Information revealed by Freedom of Information and the need for a resolution to “the Loan Charge “debacle”

We are writing regarding the Loan Charge, which remains both a deeply controversial and increasingly worrying issue, as it has led to tens of thousands of people and their families facing life-changing demands from HMRC that they simply cannot pay.

Following the revelations exposed through Freedom of Information requests, it is confirmed that it was HMRC, not Ministers, who proposed the Loan Charge and that HMRC tried, and failed, to find legal precedent for them being permitted to pursue individuals, rather than their employers.

This means that statements suggesting that “**the law was always clear**” and references citing previous court cases giving legal precedent to the Loan Charge are **wrong**. This also suggests that HMRC have deliberately misled Treasury officials and Ministers over the whole basis of the Loan Charge, which is troubling.

Recent FOI responses have also exposed the troubling facts that:

First Permanent Secretary and Chief Executive of HMRC Jim Harra admitted (in an internal email to senior colleagues) that HMRC could not find a legal precedent for pursuing employees, as opposed to employers. Mr Harra states *“In recent months I have repeatedly tried to obtain legal analysis to understand the strength of our claim with very little success”*. This undermines the claim that that the Loan Charge is based on the outcome of legal cases, which is what HMRC and the Treasury have

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claimed. **It also fundamentally undermines the conclusion of the Morse report, which claimed ‘the law was always clear ’from December 2010.** Jim Harra’s email can be viewed in the FOI request [FOI2021/00393](https://www.foi.gov.uk/FOI2021/00393)

The reality is that the Supreme Court judgment in the Glasgow Rangers ’case in 2017, often wrongly cited as legal precedent for the Loan Charge, deemed employers to be liable for any tax deemed to be avoided. This decision did not give HMRC the right to directly pursue individual contractors (as they have done so ruthlessly) by threatening them with the punitive and retrospective Loan Charge, something we now know was proposed by HMRC.

We also now know that it was HMRC who conceived the idea of the Loan Charge, not the Treasury. HMRC developed the idea of the Loan Charge and proposed it in advice to Treasury ministers in September 2015 – this is confirmed in [FOI2018/00884](https://www.foi.gov.uk/FOI2018/00884) where they admitted that they “*developed the loan charge in response to the government’s priority to tackle tax avoidance, including the use of disguised remuneration (DR) schemes*” and “*proposed the loan charge in advice to Treasury ministers in September 2015.*” This exposes the fact that HMRC conceived and introduced the Loan Charge because, as above, legal cases did not give them the direct right to pursue employees and because they had consistently failed over so many years to either stop these schemes or to adequately warn people not to use them.

Now that these new revelations have come to light, it further exposes the troubling reality of how the Loan Charge was really conceived and the fact that HMRC have simply not been honest about its legal basis. As the Loan Charge APPG have called for previously, we, the Loan Charge and Taxpayer Fairness APPG, believe there needs to be a proper independent investigation into what we agree is a policy debacle.

The current situation relating to the Loan Charge

HMRC’s own published estimates indicate that over 33,000 people still face the Loan Charge (if those whom have ‘settled ’are excluded from the original approximation) – whereas the reality of this contentious policy, when taking into account the undeniable fact that spouses/partners and children are also directly impacted, is that there will be well over 100,000 people who will suffer as a result.

It is now apparent that HMRC wrongly assumed that many more people would settle an unproven liability rather than face the Loan Charge; however, this has not transpired due to the combination of wholly unreasonable settlement terms and the fact that people, if ‘agreeing ’to settle (to avoid the Loan Charge) were forced to admit to wrongdoing and compelled to also waive any rights of appeal. As is now readily apparent, these people were clear **victims of mis-selling** in the vast majority of cases, having been assured that schemes were fully compliant and given no warning by advisers and scheme promoters of any risk.

It is also now apparent that HMRC realise that they are in a very problematic situation. In a series of recently published Freedom of Information responses, it has emerged that even HMRC First Permanent Secretary and Chief Executive Jim Harra calls it the “Loan Charge debacle”. He is right and

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this debacle has gone on for long enough. It needs a proper, reasonable solution to end the nightmare for thousands of UK families.

The need for a fair resolution

The deeply worrying reality is that when HMRC enforce the Loan Charge and demand payment from individuals on the current terms, it will inevitably lead to thousands of bankruptcies, and thousands of people having to sell their own family/main homes. There remains the real danger of further suicides, following the tragic and unnecessary deaths of seven people known to have taken their own lives directly as a result of facing the Loan Charge and its associated demands.

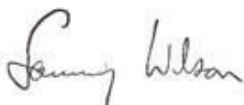
Causing thousands of bankruptcies makes no sense at all. Each bankruptcy has a cost to the taxpayer and in many cases, for those affected, being declared bankrupt will prevent them from working again or paying any taxes. To date, any mention of bankruptcies or other of the known and inevitable impact of life-changing bills by MP's to HMRC leads to HMRC (and the Treasury) trotting out the usual rhetoric about "not wanting to make anyone bankrupt". As HMRC and the Treasury know, there have already been bankruptcies – and, as HMRC will be well aware, many more are inevitable, unless you now call a halt and allow a fair resolution to this mess.

We therefore urge you to consider all options to resolve this issue, fairly and practically, once and for all, that will not only end this nightmare for tens of thousands of UK families but also get HMRC out of the situation they now face, having failed to predict the devastating impact of the Loan Charge, now knowing the true impact of collecting and enforcing payments.

It is therefore time that the Government did the right thing and found a way to resolve this situation, and consider the proposal put forward by the Loan Charge and Taxpayer Fairness APPG or other potential resolutions. Either way it does now need to be resolved in a way that allows people to move on, prevents bankruptcies and avoids the risk of further tragedies as people are faced with unpayable bills. The Loan Charge and Taxpayer Fairness APPG are fully prepared to assist and advise in order to consider alternative solutions.

We look forward to your response and hearing that the Government is now prepared to explore all options for resolving the Loan Charge debacle and finally allowing the Government, parliamentarians and families affected, to move on.

Yours sincerely,



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