



# Select Committee on Economic Affairs

## Finance Bill Sub-Committee

### Uncorrected oral evidence: Loan charge follow-up

Monday 14 December 2020

3 pm

Watch the meeting

Members present: Lord Bridges of Headley (The Chair); Baroness Bowles of Berkhamsted; Lord Butler of Brockwell; Viscount Chandos; Lord Forsyth of Drumlean; Baroness Kramer; Lord Monks.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 14

### Witnesses

**I:** Glyn Fullelove, Immediate Past President, Chartered Institute of Taxation; Andrew Hubbard, Editor-in-Chief, *Taxation*; Meredith McCammond, Technical Officer, Low Incomes Tax Reform Group.

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## Examination of witnesses

Glyn Fullelove, Andrew Hubbard and Meredith McCammond.

Q1 **The Chair:** Good afternoon, everyone. Welcome to this session of the Finance Bill Sub-Committee. I always start these sessions by saying that this is being broadcast live and our witnesses will have a chance to see the transcript after the event. Thank you very much to our witnesses for joining us this afternoon. Would you like to start by introducing yourselves and your organisations?

**Glyn Fullelove:** I am the immediate past president of the Chartered Institute of Taxation, which is the leading body for tax professionals in the United Kingdom.

**Andrew Hubbard:** I am editor-in-chief of *Taxation*, which is a weekly magazine aimed at tax professionals. I was a president of the CIOT about 10 years ago, and I have spent most of my working life in practice.

**Meredith McCammond:** I am a technical officer with the Low Incomes Tax Reform Group. We are part of the CIOT and give a voice to unrepresented taxpayers.

Q2 **The Chair:** There is quite a lot to cover. Could I ask you to try to keep answers short and to the point? I and my colleagues have a number of points we would love to discuss in the next hour. I am going to kick things off.

How has HMRC's approach to the loan charge changed since the publication of the Morse review? Has it responded? Has it got better? Has it got worse? What challenges remain?

**Meredith McCammond:** HMRC has responded quite well to the Morse review. It put out guidance quite quickly on the changes he recommended to the design of the loan charge, issued letters to taxpayers, and issued the draft legislation. It took on board the comments Morse made about its failings in its attitude to taxpayers, some of whom were in real distress. That shone through in improved communications. The wording of its letters improved and its advisers' soft skills in dealing with taxpayers improved.

That said, even though the framework is there for the Morse recommendations to take effect, there are some barriers in the way of people being able to benefit in full from those recommendations. I am also not entirely convinced that the Morse review has brought the closure we were all hoping for on the loan charge.

**Glyn Fullelove:** At a high level, HMRC now recognises that there is a greater role for it in what you might call consumer protection. This was probably becoming clear prior to the Morse review, to be fair, but the review has provided further impetus to it. We expect the results from the specific call for evidence on tackling disguised remuneration tax avoidance in the spring, but it is clear, from other consultations HMRC

has run this year, that it is now looking to stop more schemes at source rather than to follow up with taxpayers after the schemes have been implemented.

**Andrew Hubbard:** I agree with both my colleagues. It is important to remember that the loan charge is just a subset of a wider issue. Resolving the loan charge in itself will not resolving the issues relating to employee benefit trusts and other disguised remuneration schemes, some of which have been going for the best part of 20 years. It is very important that we, and this Committee, see the thing in the round. Even if every loan charge problem disappeared tomorrow, that does not mean that all these issues would be settled. There is a lot more to do yet. That is the prism through which we need to look at some of this.

**The Chair:** That is a very good point, and we will want to come back to that.

Q3 **Baroness Bowles of Berkhamsted:** What effect has the restriction of liability for the loan charge following the Morse review had on those targeted by it? What cases are there, if any, of charges continuing to be applied unfairly?

**Andrew Hubbard:** One of the problems is what you define as unfair. One of the issues with the loan charge is that, by its very nature, if you impose dates you get some arbitrary results. If you happen to be just on the wrong side of one of the key dates for the loan charge being forgiven or a settlement not being reached, you can turn around and find yourself in a very different tax position from somebody who is in almost identical circumstances.

That is one of the biggest problems. There are so many complex strands to all this that it is very easy to say, "This one's fair, but this one's not fair". If you take the general position of the rules as they now stand, my sense is that HMRC is being pretty fair in the way it is applying this. I do not see manifest unfairness in the way things are operating now.

**Meredith McCammond:** I agree with Andrew. While the people who were in loan schemes between 2010 and 2016 might have considered that they made reasonable disclosure of the loans on their tax returns and that that takes them outside the loan charge now according to Morse, my understanding is that HMRC has set the bar quite high for what it considers to be a reasonable disclosure. This means that not as many people are benefiting from the Morse recommendations as we might have hoped.

The recommendation that was of most importance to the people we represent in LITRG was not actually anything to do with people dropping out of the loan charge; it was to do with the spreading election. I have a few points to make on that, but I do not know whether you will come on to the spreading election later.

**The Chair:** Baroness Bowles, do you want to pick up on that? I am very interested in what you were just saying about setting the bar high.

**Baroness Bowles of Berkhamsted:** We will come on to the other point in a minute, but the high bar was the Treasury saying that people had to have fully disclosed use as against reasonable disclosure. Especially where employees were kept in the dark or maybe even conned, how could they possibly have had a chance to make that full disclosure? Did the Treasury know that this was totally unreasonable?

**Meredith McCammond:** You are right: HMRC is asking for multiple pieces of information as part of the reasonable disclosure. There are lots of people who would not even have put in a tax return for those years, let alone put in a disclosure and managed to meet HMRC's requirements for reasonable disclosure. There is a bit of a problem there.

**Andrew Hubbard:** There is an element of retrospection in this approach, because what might have been a reasonable disclosure under the law, as it was understood by most people at the time, was that you were receiving a beneficial loan and therefore you put a beneficial loan charge return, not that you treated the loan as if it was remuneration. At the time, there were at least reasonable grounds for considering that those loans were not remuneration. There is really quite a difficult balance there.

When I saw the proposals, like colleagues, I suspect, I immediately asked, "What is reasonable in this context?" I suspect very few people would ever have gone to the extent of saying on their tax return, "I received the following amount by means of loan that you, HMRC, might consider to be earnings". I cannot imagine that anybody would have done that.

Q4 **Lord Forsyth of Drumlean:** On this point about disclosure, HMRC seems to have taken that to mean full disclosure on the taxpayer's tax return. The point has already been made that some people may not have had to complete a tax return. We have heard evidence that, even where disclosure was made in other forms, and even where HMRC was given details of a DOTAS reference number and taxpayer's return, that did not count as full disclosure. Is that your experience?

While I have the floor, you also touched on the fact that the Morse review's conclusion was that retrospective action back to 2010 was acceptable. Again, we have heard evidence that this did not take account of the fact that, as far as the self-employed were concerned, it was not clear in 2010 because it was not until 2017 that equivalent legislation was introduced to make the position clear, to use the phrase, for the self-employed.

Would it be fair to say that HMRC is being pretty pedantic about the meaning of words that everyone thought were rather broader in scope than has turned out to be the case?

**Glyn Fullelove:** I would endorse what Andrew and Meredith have already said about disclosure. The bar does seem to be set high. That might be a reflection of what you referred to as pedantry by HMRC. At the same time, HMRC is bound by an enormous amount of statute and

case law and has to apply the law in every case in accordance with what it thinks the law says, which includes its interpretation of what "disclosure" actually means in a legal and tax legal sense.

More discussion may be needed with HMRC about the interpretation of disclosure. HMRC may currently feel bound by certain precedent and think that it cannot relax the meaning of the term further.

**Andrew Hubbard:** Here, you always have to remember the entire spectrum of people in these arrangements, from those you might say have been duped to those who were very clear about what was going on and were given proper advice. In a sense, all of this is about trying to draw a line in a reasonable place that is, in the end, slightly arbitrary. I suspect HMRC has nowhere else to go other than the line it has taken.

**Lord Forsyth of Drumlean:** Is that the case? The issue is about what is meant by "clear". What is "clear" to people who are tax professionals is not the same thing as what is "clear" to ordinary people who may have been duped or encouraged by employers to go into these schemes. Is that not the point?

**Andrew Hubbard:** I would accept that is part of the point. It is just a broad spectrum, and that is the difficulty we all have here.

**Glyn Fullelove:** More generally, the point was made about unfairness. One point of unfairness that stands out more clearly a year on from Morse relates to those who were sold disguised remuneration schemes, particularly those involving loans, without proper explanation of what the scheme entailed or the risks involved. HMRC has acknowledged since the changes to the law in 2010 that the promoters of disguised remuneration schemes are increasingly, and now probably exclusively, outside the framework of the professional bodies and many, if not most, are based offshore.

To your point, Lord Forsyth, as I am sure you will hear later this afternoon there are those who take the view that the law was not clear for the self-employed, at the same time as it was absolutely clear for the employed. It was clear at the same time that, where there were any gaps left in the law, HMRC would certainly pursue with great force anyone who went into any form of disguised remuneration scheme. Whether you thought you might still be able to get within the law, you were certainly exposed to a great risk of attack by HMRC, whatever the form of the scheme you were entering into after 2010.

There will be those who are affected by the loan charge, especially those who went into schemes after 2010, who will feel that they were more victims of mis-selling rather than tax avoiders. To my mind, it is difficult to see how we can tackle that now by further changes to the tax legislation without starting to damage some fundamental precept somewhere or other.

We are ultimately all responsible for our own tax affairs. I am afraid that is a basic tenet of the system. The question whether people were sold schemes that, acting reasonably, they could believe to be legitimate and to satisfy tax rules could be further investigated, not necessarily from a tax point of view but, going back to my earlier point, from a consumer protection point of view. Were consumers properly protected after 2010 from promoters?

**Q5 Lord Butler of Brockwell:** Can I pursue the point Meredith McCammond made about the repayment and settlement arrangements? You said that you would have something to say about them, and we would be interested in that. Are these now reasonable and properly attuned to the circumstances of individual taxpayers?

**Meredith McCammond:** There are a couple of points to make. The first is about the availability in practice of the spreading election, which is the point I raised earlier. Most of the lower-income people we represent were in schemes in later rather than earlier years, and that was the main way they were going to be able to benefit from the Morse review.

**Lord Butler of Brockwell:** Is that the spreading over three years?

**Meredith McCammond:** Yes. HMRC's recent post-implementation review report had some disturbing figures for the number of people who have managed to go on to make the spreading election. HMRC envisaged that about 21,000 people might benefit from doing that, and less than 2,000 people have gone on to do so. That raises alarm bells in my mind that there is something not right in that process.

I have thought about it, and there are a number of things that might be preventing people going on to make that spreading election, even though it would be beneficial to them. First, the form that people have to use is online, and the paper version is quite tricky to get hold of. Secondly, the form that you have to complete to tick the box to say you want to make the spreading election actually asks you a whole raft of other questions. It asks you about the scheme names that you were in, the dates when you were in the schemes and the amount of income you received from the schemes. The people we represent do not have enough information or insight about their situation to be able to complete that form. Because they cannot complete the form, they cannot make the spreading election. That is really regrettable.

There is also a problem with the fact that HMRC made the election irrevocable. If you are an unrepresented taxpayer and you hear the word "irrevocable", that is really going to scare you, particularly where you have not been in a position to take tax advice and you cannot really be sure whether making the spreading election will benefit you. There are a number of things that HMRC really needs to look at to make sure that people are not prevented from making an election that would be beneficial to them.

There were some other disturbing figures in that HMRC report. Only 289 time-to-pay arrangements have been made for people paying the loan charge. That is a very small number of time-to-pay arrangements for people who might need some extra time to pay their loan charge amounts. It has to be recognised that we are in unprecedented times at the moment with Covid; there have been job losses and income losses. Even the five to seven-year, no-questions-asked time to pay will just not be sufficient. A lot of people are having to make detailed income and expenditure assessments, which can take a long time and can get very tricky with HMRC. There is a big barrier to people being able to arrange time to pay.

**Lord Butler of Brockwell:** Do you have any evidence of hardship that has resulted from the fact that so few people have opted for the spreading arrangement?

**Meredith McCammond:** We do not do on-the-ground casework, but I know that my colleagues at TaxAid, the front-line charity, would be quite worried by those very low figures. We would recommend that HMRC use its powers of discretion as much as possible. It could also use its powers of remission, where people present with severe hardship and there seems to be no way for them to pay the amount they owe, no matter how long they are given.

**Andrew Hubbard:** Could I just make one point about the spreading, to carry on from what Meredith was saying? This has been reported to me; I do not know how widespread it is. The effect of the spreading election is not just to defer the payment; it is actually to defer the liability. Some of the liability becomes next year's liability or the year after's liability. The Revenue's debt management unit will not deal with liabilities until they have actually accrued. If you are saying, "Okay, I want to spread this over three years. I want to elect", you cannot arrange a payment plan with debt management over a two, three or four-year period, because some of that liability has not yet arisen in law and therefore they will not deal with it.

There are some issues with that which will prevent some people saying, "Look, I want to close this off. I want to know over the next four or five years, or whatever it is, how much I am going to have to pay. I want to have one set of negotiations to deal with all this and then know where I am". At the moment, there is some evidence that that is not possible simply because the liability has not yet crystallised.

**Lord Butler of Brockwell:** Is there any evidence of hardship arising from that?

**Andrew Hubbard:** I have not seen evidence of hardship. It is just about the lack of ability to bring matters to a close.

Q6 **Viscount Chandos:** In its report earlier this month, HMRC said it had taken steps to improve its communication with those affected by the loan charge. Meredith, you included communication in the list of things where

you felt HMRC had raised its game. I wondered whether you and other witnesses would like to expand on that a bit and identify areas where there could be further improvement.

**Meredith McCammond:** There are two main ways in which HMRC communicates with taxpayers about the loan charge. There is guidance and there are its letters.

Guidance is much improved now since the Morse review. The main way it has improved is that HMRC has now taken the time to tailor the guidance for specific customer groups affected by the loan charge. Previously, the different journeys for customers were very poorly demarcated, and it was all a confusing jumble. People had to read through it and pick out the bits that were relevant to them.

HMRC has done a great job of tailoring the guidance. It is still a very complex topic, though. There are now pages and pages of this very good guidance, but it is quite difficult to find on GOV.UK. It is difficult to understand how all the different pages of guidance interact and relate to each other. If there was an extra step for HMRC to take on guidance, it could be to think about consolidating it.

Previously, some of the letters were very poorly worded, and they sometimes used quite inflammatory language. Since the Morse review, HMRC has been regularly sharing letters with LITRG and other stakeholders such as TaxAid to ask us for our feedback and comments. That is a really positive step forward. However, not all letters have been shared with us and often we are not given very long to work out what our comments are or to comment cohesively. Sometimes we have made comments and feedback on issues that we think are particularly important but HMRC has not taken them on board. Although there has been great improvement, there is still more that HMRC could do.

**Andrew Hubbard:** I agree. Inherently, this is a very complicated area, and one cannot expect guidance ever to be crystal clear, but the Revenue has gone a long way towards disentangling the various strands. Its communication with taxpayers has been a bit patchy. There was a good programme of communication with taxpayers at the beginning of the year and then inevitably, with Covid and everything, life became difficult.

One thing I have heard is that it would have been useful if HMRC had sent out reminders to taxpayers before the revised tax return deadline of 30 September. With everything else going on, that could have been missed. I think the tone has improved. That is a significant achievement that ought to be acknowledged.

**Glyn Fullelove:** I have been involved in the same discussions as Meredith, and I agree with what she says. There is nothing else I can add to that.

**The Chair:** Meredith, you said that there were one or two points HMRC had not adopted. What were those, out of interest?

**Meredith McCammond:** One particular incident springs to mind. Around the summer, when HMRC wanted to issue its notice-to-file letters, it did a sweep of its database to work out all the people who it thought needed to complete loan charge tax returns based on the data it had about their loan usage. It issued these letters to them telling them that they needed to go ahead and file their tax returns by 30 September, but those letters were standard, generic letters saying, "Please file your tax return". They did not refer to the loan charge.

If you know that you need to do something about the loan charge, that is fine; you can put two and two together, make the connection and know what the letter means. However, if you were one of the lower-paid agency workers we are aware of who were put into a scheme, everything was run behind their backs and they did not really know that they were in a scheme, let alone what they needed to do in respect of it, those letters will have just landed completely flat. I assume they would have thought that the letter had just been churned out of HMRC's system by accident. They just did not have the impact that was needed. According to the HMRC report, only 6,300 loan charge tax returns were filed. The issue of those notice-to-file letters probably sits behind that to some degree.

Q7 **Lord Forsyth of Drumlean:** I am wondering about this new approach, the experience of the loan charge, the Morse review and the huge row there has been. Some of the stuff on social media is almost unrepeatable. What lessons has HMRC learned from this? What do you think about its approach to the promoters of these schemes? They seem to have got off scot free. The sort of people Meredith was talking about who were drawn into these schemes by their employers, sometimes even in the public sector, have had a pretty horrendous experience. Yet the people who have promoted these schemes seem to have retired to their yachts in the south of France.

**Glyn Fullelove:** On the general question, over the last year in particular HMRC has been involved in a number of initiatives to align its compliance approach with the strategic objective of the maximum amount of tax being collected from fully compliant taxpayers with a minimum of intervention.

HMRC has been working with professional bodies, including the CIOT, to improve its inquiry process and develop a set of compliance professional standards. There has been a review of the existing powers, which I believe followed another of your inquiries. That has been very constructive, and we are looking forward to seeing the final report on it. There has been the renewal of the HMRC charter and, importantly, the creation of the professional standards committee. I should probably disclose that I have been appointed as one of the independent advisers to that professional standards committee. I believe you are already aware of that, although it is yet to be announced publicly. That is intended to help shape the culture of HMRC going forward.

The key is to ensure that taxpayers, even if they have made errors, in some cases serious errors, are treated as compliant, or at least trying to

be or willing to be compliant, until a point is reached where it is clear that they have no intention of being so. HMRC treating everyone as either compliant or trying to be compliant is the way forward. That is the intention behind the various initiatives it has been involved in.

The promoters have been difficult to keep up with because they have exploited the use of the internet and search engines to sell directly to people or to set up umbrella companies through which they have sold. They have based themselves offshore. They have closed their operations down as soon as an investigation has been started. Yes, they have taken the money and run.

The problem has been not trying to tackle the businesses at source and close them down through greater public awareness and earlier engagement with Google, the platforms and the Advertising Standards Authority and to ensure that these businesses had no business to do, rather than trying to prosecute them later. HMRC has plenty of powers already, and we do not mind that it is proposing to take some extra powers to deal with these promoters, but we have to stop this business at source and make it uneconomic or unprofitable. That is the way to go.

**Andrew Hubbard:** I have worked for accountancy firms in the past that have been involved in some remuneration planning arrangements. Indeed, almost everybody in the profession has had some involvement with firms that have had some involvement in this. It is important to understand that for a long time a lot of this was fairly mainstream activity. Like it or not, given the way the courts interpreted some of these arrangements, there was certainly some support for the suggestion that, actually, they did work. It took a very long time for the courts to get around to the current view of disguised remuneration arrangements: that they do not work. Certainly 10 years ago it was quite possible to take the view that these arrangements were effective for tax purposes. One should never forget that.

You are looking here at the consequences of probably 20 years of HMRC trying to get to grips with all this. Although the profession does not come out terribly well, there are elements of HMRC not coming out terribly well either in trying to get to grips with what was going on here, establishing how many arrangements there were and how the different forms of structures worked.

You tended to have inquiries going on for years and years, getting nowhere, with the Revenue not quite working out whether it should look at this case by case, on a sample basis or in some other form. Consequently, this is a mess that has been building up for a very long time. In a sense, the loan charge was a proxy for a way of bringing this to a close, but it was only a proxy for it because those underlying issues still arise. It is important to understand that we are looking at a much bigger issue than just the impact of the loan charge.

**Meredith McCammond:** Glyn and Andrew have covered what I was going to say about the lessons learned. I just want to add something

about the promoters. It seems to me that they have had little fear of HMRC and the promoters' regime to date. I am not convinced that tweaking that regime by adding further measures such as making them get professional indemnity insurance will have much of an impact.

The work HMRC is doing with the Advertising Standards Authority is probably worth while, because it is about closing down the websites and removing false advertising from search engines. It will not stop the promoters completely. The only thing that can stop promoters is if HMRC gets behind limited liability and finds a way of pinning the promoters either with the penalties or with the PAYE their associated entities have avoided. Pinning those personally on the directors is the only way to stop the promoters.

**Lord Forsyth of Drumlean:** Why is it not doing that? I do not mind well-heeled investment bankers and people who are running schemes getting caught. The thing I find unforgivable is that people have had their lives ruined because they were brought into a scheme, sometimes by their employers in both the private sector and the public sector. The people who are responsible for this are not being held to account. It is the point Andrew Hubbard made about mis-selling. We have seen what has happened to the banks in respect of mis-selling, and what has happened here is gross.

**Q8 The Chair:** HMRC's own figures say that in 2013-14 there were 22,000 individuals in disguised remuneration schemes. The figure for 2018-19, which is the most recent, is 30,000. Something is going on here. First, I would like you to say why that number might have increased. Secondly, following up on Lord Forsyth's point and Mr Hubbard's point, I am interested to know whether we should be looking at a wholesale revision of this approach or whether tinkering will have the desired impact, given those figures.

**Andrew Hubbard:** I have more faith in the current figures than I did in the past figures. My sense is that a greater number of people were in disguised remuneration arrangements than HMRC has recorded. This comes back to issues about disclosure. If you were in a disguised remuneration scheme seven or eight years ago, what were your legal obligations to make any sort of disclosure there? That is one element.

There is no doubt, however, that the market has moved more and more into the sort of arrangements we have been talking about now. I suppose you put yourself in the shoes of an individual who is trying to work out what options are available to him or her. I googled health workers and tax this morning. There are some fairly straightforward things there, such as claiming for uniform cleaning allowance or arrangements for salary sacrifice pensions, which are fine, and some things that are clearly not. It is quite difficult to work out where the boundaries lie.

There are still tax-technical people out there who genuinely think that some of these arrangements still work. There are a very small number of them, but they do. To some extent, they have convinced themselves that

they have found a way through this impenetrable legislation. There is no doubt that there are still some people who take that view.

**Q9** **Baroness Kramer:** To follow up on the points made by the Chair and Lord Forsyth, I wonder whether the engagers are quite so naive and innocent in this entire process. Like others, I have been astonished that the schemes are still being sold. Folk being recruited to return to the NHS to deal with the Covid crisis and other health issues are finding themselves approached on a regular basis to engage in these kinds of schemes. Is there some relationship going on between promoters and engagers, even if it is through an intermediary or some sort of agency, that needs to be explored? I can see Meredith nodding. She might have a thought on that.

**Meredith McCammond:** By "engagers", I assume you mean end clients such as the big public sector employers.

**Baroness Kramer:** Exactly, yes.

**Meredith McCammond:** You are absolutely right: we need to recognise that this is not a discrete issue of people having a personal avoidance motive. There is a bigger labour market issue here.

The issue is that there is a lot of money flowing through supply chains. If you are an employing entity in a supply chain, you can turn over an awful lot of cash. If you can set yourself up as an employing entity in a supply chain and you get a worker on your books and the agency passes you £500 to deal with them, £400 of that will be the worker's gross pay, £70 might be the employment costs on top, and you get to keep £30 under general principles. If you use a loan arrangement, you can carve the same net pay out of a much lower gross amount and slash your employment costs. Instead of making £30 per worker, you are making £50 or £100 per worker. There is a much bigger supply chain issue going on here.

There are other bodies that could take steps to secure those supply chains. Agencies could do more due diligence on who they are asking workers to work through. We have to remember that, these days, agencies do not offer in-house PAYE. They have to ask workers to work through an umbrella company in order for them to get paid, so agencies need to take more responsibility when it comes to whom they are asking workers to work through.

That also applies to end clients, in the public sector especially. It astonished me that even in the NHS framework agreements for agency workers there are no tax compliance requirements. There is a lot of stuff to be unpicked.

**Glyn Fullelove:** I agree with Meredith. If you are engaging someone, you have a budget to engage a number of people and you will try to make it go as far as possible. I cannot rule out that somewhere in the supply chain, in some company or some organisation, there is collusion between a promoter and an engager, but it is not the main problem. The

main problem is that there is no responsibility on the part of the engager to ensure that the person they are engaging with is being compliant in their tax affairs. It astonishes me that the NHS, for example, has no scheme whereby it will work only with agency suppliers that have some kind of certification for properly deducting PAYE and NIC and that are not involved in these schemes.

**Andrew Hubbard:** I agree that it is astonishing. If you are looking at these arrangements and trying to work out the number of parties involved, in the supply chain of the labour but also in the supply chain of the taxation advice, it becomes incredibly difficult to pin down where liability arises, regardless of whether there is anybody around to pay it. It is not a simple question of it being either A or B. It could be A, B, C, D or E. Somewhere along the line people will be taking a slice of the gross fee in the way the labour is provided.

One of the real difficulties that HMRC has had in all this is to ask who, when the music stops, is legally responsible for paying the tax that has not been paid. Is it the employer? Is it the end user? Is it somebody else? Is it the trustees of the trust? Quite often, it all rather falls apart.

Q10 **Baroness Kramer:** We have talked about the extension of the deadline for returns on outstanding loan charge liabilities to 30 September. Meredith said that that deadline elicited very few actual returns. You said something about it being only in the range of 6,000. Is this another of these activities that the more sophisticated clients with advisers will have been aware of and been able to comply with, but our less sophisticated lower-income group will have fallen foul of that deadline? Might they now be in more dire circumstances for having missed that deadline? Is it a reasonable deadline when we are in the middle of a Covid pandemic? Your thoughts on that would be exceedingly helpful.

**Andrew Hubbard:** It is quite important to understand what is meant by "deadline", because HMRC has not changed the date on which the tax return is due; it has changed the date from which you will not be charged a penalty or interest. That may seem like splitting hairs, but it is quite important. I am certainly aware of one case where the return was three or four days late; it came in on 2 or 3 October. Because it was a late return, the rules for return penalties kick back to 31 January.

It is not a change of deadline for the late return; it is simply a date from which penalties will not be charged. That is quite a sophisticated point. It is pretty important. People think, "I've missed that deadline, but only by a few days, so it won't cost anything. It might be £100". Actually, you are into the full panoply of late return penalties because you are six months late or whatever it is.

**Meredith McCammond:** Andrew is absolutely right. We worked up some figures with someone who had to include £1,000 of loan charge income in their tax return. Their tax liability would be £200 but, because they were a day late, their late-filing penalties would be £425, more than double.

That is completely disproportionate, and it will prevent people taking the final steps to file their tax returns.

The point you made about the low number of loan charge tax returns being filed is key. As I alluded to earlier, there are a lot of people out there who simply do not have enough information or insight about the scheme usage, about the years they were in it or what was going on because their employers put them in the schemes behind their backs.

Unless something fundamental changes, unless for example HMRC starts writing to these people and saying, "Look, we have data on you. We know you were in this scheme on this date with this umbrella company", the impasse will not be broken. It is a stalemate. HMRC can send out as many letters as it wants, telling people they have to file a tax return, but if they simply do not know that they were in a loan scheme, they are not going to know what the tax returns are in aid of. Something needs to change.

**The Chair:** As a ballpark figure, how many people are in this category?

**Meredith McCammond:** I do not know. HMRC's figures in the recent review were quite interesting: 6,300 tax returns have been filed with loan charge amounts in them; 12,000 people whom HMRC was expecting to file tax returns have not filed any tax returns at all. The difference includes people who have filed tax returns but did not include the loan charge. There is something wrong somewhere.

**Baroness Kramer:** I applied online for a state pension and I could not complete the form. I made one phone call after holding on for two and a half hours, got through and the whole matter was cleared up in 20 seconds because the appropriate authorities already had the complete record they needed. I suspect that many of the questions that are embedded there are double, triple or quadruple checking and not information that the taxpayer needs to provide.

Q11 **Lord Monks:** We have been moved considerably by the plight that a lot of people have found themselves in. Unlike the normal run of tax avoiders whom HMRC will traditionally have been dealing with—the comfortable, the wealthy, people with means and resources that they are trying to protect—the people we have heard from in the main are low paid and vulnerable. They are in a completely different cultural category from the traditional clients of tax avoidance whom HMRC has been dealing with.

I am interested to know whether you think HMRC understood the type of people it was dealing with, the vulnerable or the relatively poor, and whether it understands that now, after all the work that you, we and others have been doing to bring this to its attention.

**Glyn Fullelove:** Did it understand initially? I do not think it did. To some extent, we have to recognise what HMRC is and is there for. It is there to collect the nation's taxes. That is its first priority. It took a while for it to

realise that this form of tax avoidance was distinctly different from the sorts of tax avoidance you have mentioned.

I disagree with Andrew that it is only five years since it has been reasonable to assume that these things might work. It is at least 10 years. In 2010, the corporate tax avoidance market collapsed. It collapsed because corporates did not want to get involved in that type of blatant tax avoidance anymore, but disguised remuneration tax avoidance continues. HMRC's resources, which had been dedicated to one type of avoidance, have shifted to another type of avoidance without a change in approach.

From all the contacts I have had over the last two years at least, I would say that has now changed. There is a recognition that this is a different type of avoidance and that there is a consumer protection point here that HMRC did not spot several years ago.

**Andrew Hubbard:** I might have a private conversation with Glyn afterwards about whether it is five years or 10 years, but I know where he is coming from and I think he will know where I am coming from.

If you look at HMRC's attitude to this, there was a sense that these people must at least have had some idea of what they were doing. They would not have known the ins and outs of it, but they would know that somehow they were paying less tax than they should be. Therefore, HMRC's view of the people we have been talking about today was that, in a sense, they were turning a blind eye to what was going on. They probably knew that something was not quite right but they did not ask too many questions because they got the cash in their pocket.

It took a very long time for HMRC, which is professionally sceptical and has to be as part of its work, to get beyond that and realise that there was a population here who really had no idea what was going on. Some people clearly knew what was going on, some people were quite content to take the money and not think, and some people were completely oblivious to it. HMRC has been recalibrating the needle on that. As Glyn says, it is in a much clearer place than it was.

Culturally, to somebody in HMRC, the idea that somebody can get into an arrangement where they pay a lot less tax without understanding it was quite difficult.

Q12 **Baroness Bowles of Berkhamsted:** I want to turn to the matter of repayments. In the Government's December 2020 review, they reported that HMRC had yet to make those voluntary restitution payments that no longer fell within the scope of the loan charge. What is your response to the fact that none has been made yet? What could HMRC do to speed up its pace of repayment? It is interesting. We have been talking about culture. Is it just totally against the culture of HMRC to make them? What is the problem?

**Andrew Hubbard:** It is culturally quite difficult for HMRC to repay money, but there is a process of claiming for repayment of voluntary

restitution amounts, and the forms are very, very complicated. HMRC fills in some information and gives a relatively short amount of time—I think it is two weeks—for people to respond. With the best will in the world, it is almost impossible to understand whether those calculations are right or wrong. There are just so many figures there. That holds the whole system up.

I do not know how many voluntary restitution payments will ultimately be made, because voluntary restitution is a very odd thing in this context. People make voluntary restitution payments in the context of settlements largely because it enables them to close the whole thing off rather than paying money voluntarily where they have no other reason so to do. It is quite often convenient to make a voluntary restitution payment to bring the overall settlement down.

You come back to the point I made at the beginning. These are still issues that need to be resolved. Ultimately, the inquiries into these arrangements need to be closed. Therefore, although you may not get the voluntary settlement money back, it may mean that you have no further tax to pay within the overall settlement. It is quite a complicated dynamic here. For those people who are due a voluntary settlement, the process is pretty complicated.

**Baroness Bowles of Berkhamsted:** Is it deliberately complicated to try to discourage people?

**Andrew Hubbard:** I would not be as cynical as that.

**Baroness Bowles of Berkhamsted:** I am.

**Andrew Hubbard:** With respect, you are allowed to be. The calculations are inherently so complicated that you can easily get lost.

**Meredith McCammond:** Andrew is right: the fact that people have to make an application rather than the refund being automatic means that a lot of people are going to take the view: "I've paid it. I should let it go, put it to bed and get closure". That will be very important for a lot of people. For others, the process will put them off. It is very longwinded. There are about seven stages. It is conceivable that a number of taxpayers are just going to put it in the "too hard" basket.

Q13 **Lord Butler of Brockwell:** We have taken evidence on this from other witnesses, but in the original inquiry it was felt that the Government ought to do more to tackle the "hard core" of promoters. We know they have reduced them. From your experience, is HMRC doing enough?

**Andrew Hubbard:** It has made very big strides. The major firms have largely retreated from this marketplace. There are a small number left. The work it is doing with the Advertising Standards Authority seems pretty important and perhaps more likely to achieve something than some of the penalty regimes for promoters. If you are of a mind not to co-operate with that, if you are offshore or if the money has been

dissipated, in reality there are no teeth to those. The ASA thing is probably the best way for the Revenue to move things in this direction.

Q14 **Lord Forsyth of Drumlean:** This is rather an obscure question, but it comes back to what Andrew Hubbard said right at the beginning about how we must recognise the loan charges as one example of disguised remuneration schemes. It was drawn to my attention that Mary Aiston, who is in charge of counteravoidance at HMRC, in speaking to the Select Committee in the other place, said, "The purpose of the loan charge is to draw a line under disguised remuneration as a form of avoidance and to ensure that people who have gotten into disguised remuneration avoidance—as you say, tens of thousands of people and sometimes over a number of years—pay their fair share".

She was asked whether it was a prompt to settle, and she said, "I hope so". She went on to say, "It is our hope that lots of people will take this as a prompt and an opportunity to come in and settle and get out of their disguised remuneration once and for all". Is the whole business of the loan charge scheme and the response to it contingent on trying to get settlement on other disguised remuneration schemes? Is this idea of a prompt right?

**Andrew Hubbard:** I think that is right. You have a whole situation where the Revenue was arguing that the money going into an arrangement was taxable, but it was not getting very far with that. Then it was argued that the money coming out of the scheme in the end or the loan being written off would be taxable as well, but nothing was happening there.

The loan charge was a prompt to say, "You're going to have to pay the tax anyhow under the loan charge, so settle everything and be done with it", but it has not quite worked out like that. The fact that some people are now taken out of the loan charge for old loans does not mean that they do not still have a tax problem in relation to the unwinding of the scheme as a whole. It was always to be seen as a prompt, just like accelerated payment notices were, to say to people, "Look, you've paid the money now. Let's just wind the whole thing up". It is a very messy business.

**The Chair:** I will end by thanking our three witnesses very much for their time, contributions and evidence. We are extremely grateful for that. I am sure I am speaking on behalf of all my colleagues. Thank you very much.