



Select Committee on Economic Affairs

Finance Bill Sub-Committee

Uncorrected oral evidence: Loan charge follow-up

Monday 14 December 2020

4.05 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. 2

Virtual Proceeding

Questions 15 – 28

Witnesses

I: Andrew Chamberlain, Director of Policy, Association of Independent Professionals and the Self-Employed; Keith Gordon, Barrister, Temple Tax Chambers; Gareth Parris, Operations Volunteer, Loan Charge Action Group; Blanche Zaph, Helpline Volunteer, Loan Charge Action Group.

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Examination of witnesses

Andrew Chamberlain, Keith Gordon, Gareth Parris and Blanche Zaph.

Q15 **The Chair:** Welcome to our next set of witnesses. This is broadcast live and, as I always say, you will have the opportunity to correct the transcript, should you so wish afterwards. Could I start by asking you to introduce yourselves?

Andrew Chamberlain: Good afternoon. I am the director of policy at IPSE, the Association of Independent Professionals and the Self-Employed.

Keith Gordon: I am a barrister at Temple Tax Chambers.

Blanche Zaph: Good afternoon. I am retired and the supportive partner of a loan charge victim who joined an umbrella company in 2012 and discovered he was subject to the loan charge in September 2018, a few months after retirement. Since that time, I have been an ardent volunteer within the Loan Charge Action Group. To date I have taken many desperate calls on our helpline, met two of the six families affected by suicides, personally informed an MP of the seventh suicide, by one of her known constituents, and have read hundreds of impact statements that have been beyond heart-wrenching.

My partner recently suffered a breakdown due to the stress of not having any tax certainty, and I will do all that I can to support the law-abiding citizens who acted in best faith, trusting their chartered accountants, who recommended QC-approved schemes that were compliant at the time with HMRC.

Gareth Parris: I am a member and a volunteer at the Loan Charge Action Group. I am also an IT professional of some 26 years. I operated for 12 years as a limited company. I ended up in schemes both pre and post 2010, all of which years are still open and unresolved. I have been trying to settle since 2018, continuing into this year, but I have been unable to settle as of 30 September and have now been pushed into the loan charge.

Q16 **The Chair:** Thanks for those introductions. I will kick things off with exactly the same question that I started the first question with. How has the Morse review changed things? Has it changed things for the worse, for the better or not at all? Blanche, do you want to kick off?

Blanche Zaph: Nervously, yes. I think Sir Amyas meant very well. I read his review. It has not been interpreted accurately, and I think he would be quite disappointed with the way HMRC has treated the items of the review, in that they have not really been acted upon.

Keith Gordon: Has HMRC's approach changed? Yes, because the framework has changed, but the underlying message I see from HMRC is pretty much the same. It is just as bad as ever. In the previous hour, you touched on the question of reasonable disclosure. I believe Lord Forsyth

asked the question then. The difficulty with reasonable disclosure is that the Revenue guided the Treasury, which guided parliamentary counsel. It is the statute that requires the disclosure on a tax return and there is a very high hurdle to overcome to get around the rules that are in the Finance Act. That is all much stricter than what Sir Amyas was seeking when he asked for reasonable disclosure.

The other point on which the Revenue actually refused to abide by Sir Amyas's suggestion was the spreading of payments over a number of years when someone could not afford to pay. As justification, the Revenue asked, "Why should we put loan charge victims"—if I can use that terminology—"in a better position than other tax debtors?" There is a very simple answer to that question, and I have been bursting to tell you this over the last hour.

The loan charge victims are, in the first place, in a different position from other tax debtors. You heard in the last hour how the loan charge and the loan arrangements fit within a pattern of tax avoidance. Tax avoidance has been going on probably as long as tax has been around, if not longer, but there is a fundamental difference between the tax avoidance that one has normally read about over the last 20 or 30 years and the tax avoidance that is faced here. It is not the wealthy bankers and other wealthy businesspeople who have asked, "Can we take a little money out of our business and pay a little less tax?" They go with their eyes wide open into a particular scheme and they know the risks.

This is unwitting tax avoidance, in that people have become pawns to other people, the promoters, who have effectively taken cash, whether or not you call it fees, that ought in reality to have been tax. It is not individuals avoiding tax; the individuals have had less tax accounted to their name than they should have had, because other people have been manipulating things behind the scenes without their full awareness.

You are dealing with a category of individuals who are very different from the normal clientele of the Revenue's counter-avoidance department. I can understand why the Revenue has taken time to get used to this new reality, but the loan charge has come along and imposed a tax charge, not on all tax avoiders, and the Revenue says, "We can't be bothered to litigate these cases because it's far too difficult. We're going to impose a charge amounting to how much we think you owe, so you pay whatever happens". The loan charge, that device, has been introduced exclusively for unwitting tax avoiders.

Some 99.8% of the population do not participate in these kinds of arrangements, to use the Revenue's statistic, but that does not mean that other people are not avoiding tax. It is only the 0.2% of the population who have been forced and funnelled into these arrangements who have found that the Revenue is taking its revenge against them. It seems to be the least culpable group of people who are getting the worst kind of punishment.

As I was saying before, if any group is entitled to more favourable treatment in settling their debts, it is the loan charge victims, but there is a more fundamental problem: the loan charge itself is inherently unfair.

Andrew Chamberlain: IPSE has always advised our members to be very, very careful before entering into these schemes. We have said to people, "If it looks too good to be true, it probably is". Many people received other advice. This is clearly the theme that will keep coming up here.

The promoters seem to have got off scot free. They are the people who have been telling people, "Come into this scheme. It's perfectly compliant". The reason why these schemes flourished 20 years ago is somewhat attached to the IR35 rules that came in, which were set to trap a certain group of taxpayers. They felt that it was going to stop them running their business the way they wanted to, and they ran into the arms of these promoters, unfortunately. There was a confluence of events that landed us in this place.

Your question was about the Morse review and whether things have improved. We think that they have a little since the review. We welcomed it. Its headline recommendation was that loans taken out prior to December 2010 would not be subject to the charge. That is to be welcomed. We actually wanted it to be a bit more recent than that, but, nevertheless, we welcome that.

We have heard, as Gareth alluded to in his introductory remarks, that some people who took out loans prior to that date are still involved with the loan charge, and that troubles us.

Q17 **The Chair:** To pick up on the points that have been made, I have in front of me the HMRC charter, which has, under its standards, headings such as "Being responsive", "Treating you fairly" and "Being aware of your personal situation". Given what you know about what is happening with the implementation of the loan charge, do you feel that HMRC is upholding the charter in part or not well at all? How would you describe what you are seeing, given what it is committed to in the charter?

Gareth Parris: From my point of view and that of the many members I communicate with daily, the attitude towards and treatment of people has not changed at all. Errors are still being made, there are delays in conversations about settlement of the loan charge, there are discussions that do not really confirm whether you are going to be in the loan charge, and no final settlement discussions.

The Morse review itself made very little difference to the majority of the people. HMRC's latest figures show that about 12,000 people out of the 55,000 have now settled. The initial template letter sent out in January briefly outlines the options after the Morse review, but not in much detail. It literally says, "Go to the website" or "Give us a ring, and we can discuss what we need to do next".

People who settled prior to 30 September, of whom there were not many, are no longer facing the loan charge but they are facing scarcely affordable and unfair payments, as the settlement was made under duress and threat of the loan charge. I want to highlight here that there is some confusion. "Settlement" is not the same as paying the loan charge. Paying the loan charge does not settle anything; it is just a payment on account.

If you have paid the loan charge, the underlying tax situation still has to be sorted out, and you can end up paying more tax later on if they deem that more is due, with inheritance tax on top. If you settle, that should close the case. In my case, I have had open inquiries from 2010 to 2016, and I have not had a single piece of correspondence about them ever since they have been opened. There have been constant settlement discussions and now the loan charge. The people facing the loan charge after 30 September, including me, have yet to hear from HMRC specifically what that means.

Blanche Zaph: Thank you for reading the charter. Last July, the APPG had a meeting on HMRC behaviour, covering wholly unaffordable time to pay, aggressive communication, threats of bankruptcy, communication arrival times—I will explain that—offering unregulated financial advice, and increasing delays in HMRC responses. From everything I have seen, nothing has changed. Nothing in the charter seems to come across.

HMRC does not seem to have enough staff. There is no consistency between any of the victims. One might be offered one thing, one might be offered another. If you are dealing with something so important, you expect a fairly reasonably timed response, but I know of one person who is on their sixth attempt. They waited some weeks for a response from HMRC. They eventually got one that wanted a decision within 24 hours. It is not unusual for our members to receive communications on specific dates. It could be a national holiday, it could be a birthday, it could be an anniversary. There are too many of these to be just coincidence.

I would like to make a distinction between the people in HMRC who deal with the loan charge and other HMRC departments. Specifically in this section there is no sense of empathy, and very often the person at the other end is ill informed and aggressive. Records are not kept very well at all, because you never get the same person and you have to start all over again. There does not seem to be a rulebook, because it seems to be up to each HMRC representative to decide whether to make a discount, whether to accept your expenses on a percentage basis or whether they want to see receipts going back beyond six years, which for most people is impossible.

Q18 **Lord Monks:** Following up on the last question, what effect has the restriction of liability for the loan charge following the Morse review had on those who have been targeted by it? What cases are there, if any, of the charges continuing to be applied unfairly? Blanche probably has quite a lot to say about that, as have our other witnesses.

Gareth Parris: We have examples of people who do not face the loan charge still being pursued by HMRC. People who no longer face the loan charge but have open years pre December 2010, for example, are still being chased. Limits need to be applied to how long this should go on for. For those now out of scope from pre 2010 years, HMRC has said that it will create a new department to go after the tax due, effectively reopening closed years. It seems not to care how many people or families face ruin, go bankrupt or even commit suicide, from what we are seeing. It is even trying to get revenue that it has never been legally demonstrated to be entitled to, however it can get it and regardless of the cost.

The Chair: Setting up a department to go after outstanding tax from pre 2010 does not seem to sit well against the recommendations from Sir Amyas Morse, does it?

Gareth Parris: Not on the face of it, no.

The Chair: To clarify, we are consistently told by HMRC and others that no one should be forced to sell their home or go into pension pots et cetera. Are you saying that those statements are not correct? What is your view about the assurances that we are consistently being given?

Gareth Parris: Technically, it is not HMRC that does that, though, is it? It gets the courts to decide that or sells the debt on to a debt management company. It is those people who make them go bankrupt. Technically HMRC does not do that. That is the feeling we get about why they do that: it is to make it not look like them.

Blanche Zaph: I have been with the Loan Charge Action Group for two years. People are law abiding; they do not want to be on the wrong side of the law. They receive a letter from HMRC, they assume it is official and absolutely accurate, and they panic. They think they have done something criminal or very wrong, and that they are going to bring shame on the family. Whether they owe the money or not, they just want the loan charge behind them.

We know of people who have sold their homes. We know of people who have taken out second charges. The big difference is in age. Those below retirement age still have a working life and are able to take out enormous loans to clear themselves. Those over retirement age—this might go back 10 years, but it is still being sought—are beyond their working age and risk losing everything they have ever worked for. It is not just them and their partner; it is the extended families in all different directions.

I heard late last week of one instance where an HMRC representative on the phone suggested that if somebody took a second charge on their property they would pay the set-up legal fees. Earlier on, I said that there did not seem to be any manual that these people were working to. As you can imagine, we have lots of forums and lots of chat groups. If there was an easy way to settle the loan charge or settlement—they are two very different things: if you go for settlement, it is not an end, it is

open-ended, and you sign away your rights— If there was an easy way to fill out these forms or an easy way to do anything, it would be on one of the forums. A lot of people have been unable to go for settlement simply because of the delay in HMRC responding to them and them missing the deadline.

Keith Gordon: Gareth talked about the pre-2010 years, and the Revenue's very sinister comment: "We'll set up this new unit". It is not clear what that means. There are two possible interpretations. One is that it will use its resources to tidy up existing inquiries that were opened and have gone stale, in a non-technical sense, that just need to be tidied up. Then there is an alternative interpretation: "We're going to find a new way of getting you, possibly through a discovery assessment with a 20-year lookback".

That latter reading I would find very sinister and very worrying, and I hope the Revenue will say that that is not what it meant. If it is the former, there is very little one can do about it, other than to ensure that HMRC takes serious customer care when approaching taxpayers. If someone had an inquiry opened in 2005 and nothing has happened in the last 15 years, as a matter of law the Revenue still has the right to close that inquiry and seek the additional tax that it considers to be due, subject to statutory safeguards which the taxpayer might have. As much as I would think it is unfair that a taxpayer can be told 15 years after the event that this inquiry, which they have long forgotten about, is still open, I cannot say that it is unfair from a legal perspective. It needs careful handling.

I have always objected to the loan charge because it effectively tried to short-circuit the Revenue's attempt to secure the tax. I have never said that an inquiry that was validly opened in 2005 cannot be validly closed in 2020 or 2021, but the important thing is to understand what the Revenue means. On the other hand, there is a good argument for the Revenue, after 15 years, simply drawing a line under it, but that is a separate matter.

Q19 **Lord Butler of Brockwell:** Blanche and Gareth have made some very strong criticisms and we as a committee want to consider what can be done to improve the situation. What would be your priorities? If you were being asked to conduct the Morse review, what would your priorities be for improving the present situation?

Andrew Chamberlain: You could extend and make it easier for people to settle over a longer period. You could do something with interest. You could say, "We're going to remove interest charges". That would be one option. We heard in the previous session that people have found it difficult to take up the spreading option, and the time-to-pay option has not been taken up well either. There may be a problem with applying for that and with the forms being complicated et cetera. You could look at all that again.

More broadly, we believe that the general point is that the Government should focus their attention on preventing future abuse. These schemes are still being marketed. I have worked with HMRC in the IR35 forum and talked about this. I know it is doing some work with the Advertising Standards Authority to shut down these adverts. That is a very good thing, but I believe that more focus should be put into that type of work and that there should be less focus on looking back at what happened 10 or 15 years ago.

When it came out, the Sir Amyas Morse review was sold to us as a compromise position. We had this problem with the loan charge. The most egregious cases went back 20 years. People had no idea. At the very least, the law was in a grey area back then. Even in the commentary on it, lots of people were saying, "It's okay to do this", and it was a pretty mainstream thing to do. We cut out the 10 years between 1999 and 2010, and said, "If you had a loan in that time, you're off the hook". We need to stick to that principle. A line needs to be drawn under this somewhere, because otherwise you are just going back too far. It troubles me to hear that, for some people in that position, a line has not been drawn under this.

Keith Gordon: Why did Sir Amyas reach the date 9 December 2010? My view is that, despite the best endeavours of the experts he had before him, he was unwittingly misled, because the expert advice he received—you heard reference to this earlier this afternoon—was that the situation became clear in 2010 that these schemes did not work.

As my written evidence suggests, it was very clear that the schemes did not work in the employment sphere, but the schemes then evolved to make people self-employed. It is not quite a huge leap for contractors to move between employment and self-employment, which is one of the reasons why IR35 is such a problem. Sir Amyas recognised that there had to be a jolly good reason to have a retrospective or retroactive charge, and he felt that this was a situation where it was justified. The reason he was given was, in fact, false.

If you are going to draw a line, get rid of the loan charge—maybe I am being overambitious—and let the ordinary tax-assessment procedures take their course.

Q20 Lord Forsyth of Drumlean: As you have touched on it, Mr Gordon, I read your evidence to the Committee, with the two points you made about whether it should have been 2010 or 2016, and whether the Morse review was not properly advised. You appeared to say in your evidence that HMRC interfered in the choice of advisers for the Morse review. Speaking as chair of a committee—I am sure Lord Bridges will say the same—what alarmed me was the suggestion that no one who had given evidence to a Select Committee should be allowed to be chosen to give advice to the Morse review. Did I read that correctly, or am I putting it too strongly?

Keith Gordon: You have it 90% correct in your interpretation of the evidence. This evidence was first unearthed by the loan charge APPG, but I have seen a copy of the email correspondence myself. Sir Amyas was strongly counselled against taking anyone who had given advice to a parliamentary committee because, to use the words in the Treasury email, they were compromised. I have no disrespect for her whatsoever, but they recommended Heather Self, who was working in the counter-avoidance team at the time the Finance Act 2011 proposals were first announced. Heather has perfect integrity, but how can someone who was working alongside the people who are fighting these schemes not be compromised while an independent witness can be compromised?

Lord Forsyth of Drumlean: I just find it extraordinary. All of you are now presumably compromised because you have given evidence to a committee. It is an extraordinary assertion to make, but that is the case. Is the piece of paper that you refer to available?

Keith Gordon: I can forward the copy that I was able to obtain. It took me six months of Freedom of Information Act and Data Protection Act requests. It is still heavily redacted, but it came exactly six months after I asked for it.

Lord Forsyth of Drumlean: On the same theme, I have seen material on social media that suggests that HMRC had a pretty heavy input into the terms of reference of the Morse review. Are you aware of that?

Keith Gordon: I have seen the same material you have seen. I have not seen it independently. There is a strong message that the Treasury and the Revenue—I will treat them as a single body—were very embarrassed by what the loan charge did. They are reluctant to admit their own errors over 20 years. They are trying to shape the discussion and the narrative.

Just look at the review conducted by the Treasury at the beginning of 2019, following the amendments made in the Finance Act 2019, and the report the Chancellor had to give in March of that year. That seems to suggest that the loan charge was perfectly fine and perfectly fair, and it stands in very stark contrast to the Morse review. I do not believe the Treasury and the Revenue are acting fairly. They are clearly party to the entire fiasco that has been caused. That is the problem: they are not stepping back and saying, "We will look at this fairly", because they cannot.

This committee and other committees will have experienced the difficulty the Revenue has in giving straight answers to straight questions. Was HMRC itself engaging individuals who were remunerated in this way? The response was, "We don't pay people in loans". That was not the question asked, yet it is clear that in 2019 it was still engaging people who were using these arrangements.

In the Freedom of Information Act requests, we have seen, albeit only via Twitter, that the Revenue has considered how little information it can actually give, balancing the need to protect the media narrative, which is

how it was described, with its legal obligations. It is just not being candid, and that is the underlying concern I have.

Blanche Zaph: We also made freedom of information requests, and it took us many months to get answers. We understand that HMRC employed people engaged in those schemes, and not only HMRC but other government bodies.

On the question of improvement, it would be good if HMRC could communicate and respond within a reasonable timeframe, and if it had a manual that everybody worked to rather than making ad hoc decisions. Every time HMRC makes a charge, it should be clear in writing. If you get a bill, you should be able to see what it is for and what the calculations are. If you agree a price, which people have done, it is most unfair afterwards to get another bill for interest that had never been mentioned, that you had not been expecting and that may inflate your debt by 20% or more. Really, my answer is that HMRC should behave in the professional manner expected of a government body.

Gareth Parris: We are seeing no real improvements on the ground. The improvement that was needed was that HMRC should have communicated at the time we were in the arrangements that those might later be deemed unacceptable. Its failure to do this has meant that thousands of lives have been ruined.

Q21 **Viscount Chandos:** I am very struck by the difference, at the very least in tone, between what pretty much all of you have said about communication by HMRC and what was said by the members of the earlier panel. They seemed to concur with HMRC's own assessment in its report at the beginning of this month that it had taken steps to improve its communication with those affected by the loan charge. Clearly, in the most distressing cases, the suicides that you referred to, Blanche, the nature and tone of the communications that people have received lie at the heart of that.

Do you see any sign that the communication has improved, not just in the provision of information but in the tone and the absence of threat that is needed?

Blanche Zaph: I can only go by feedback from fellow members of the Loan Charge Action Group. We have had one or two positive responses where people have been sympathetic at the other end, but it is very few and far between. Generally, there is no joining of the dots. People do not know where they are.

This is the worst thing: the minute you find out you might be involved in the loan charge, your life immediately goes on hold. There are people who have not told their spouses or families. They do not want to tell their spouse, for various reasons. They do not tell their teenage children in case they do not want to go to university. Mostly, they suffer shame. Then you get huge personality changes.

I know I have not been asked the question, but there is absolutely no doubt whatsoever that the loan charge is retrospective. If it was clear in 2011, we would not have needed the 2017 loan charge law. It is disputed that it is retrospective, but you can look at the documentary on "File on 4", which included evidence on the Knox Group, AML, and Doug Barrowman in particular. It has been stated in the House that they have done nothing wrong or illegal because they cannot be charged retrospectively. If they cannot be charged retrospectively, why do we, the low-hanging fruit, the law-abiding people who pay our taxes, get penalised for that?

Q22 **Baroness Kramer:** I would like to come back to the previous discussion and pick up one particular issue about the engagers. Blanche is probably the most aware of this. HMRC explained that when it takes contractors on board, including IT contractors, it does so through agencies, and that, after questions were raised, it had gone back, checked its processes, and is certain that none of the contractors engaged to do work at HMRC was involved in schemes that would make them subject to the loan charge.

I was at an APPG loan charge meeting where an IT contractor working on a project for HMRC made it quite clear—I will try to disguise the person by saying "he/she"—that he/she is indeed subject to the loan charge for work done as a contractor to HMRC, at quite a senior level. When asked why he/she, who clearly had expertise in the area, was not aware that the issue put the individual at risk, he/she showed emails from the agency explaining that HMRC, as the engager, had full sight through to the terms that applied to anyone engaged for HMRC and had, in effect, given its stamp of approval to the scheme. This individual was aware of quite a few others who had been engaged by HMRC in the same way, again through agencies but in a consistent chain of transparency, or at least that was the claim.

Do you have any further evidence in that area that might be made available to the committee, because we will, we hope, have an opportunity to talk to HMRC? It seems important to get clarification. If it was so obvious that these schemes were outside the law, in effect, surely HMRC, of all bodies, would have been fully aware of them.

Blanche Zaph: I could not agree more. With my hand on my heart, if there is evidence, we will get it to you with great speed.

Baroness Kramer: I understand that it is sometimes difficult for individuals, who fear that they are going to put themselves at risk. I would not want to put anybody in that situation, but it seems to me an important point of clarification.

Gareth Parris: How can HMRC say that things were clear when we have now seen through these freedom of information requests, which we can forward on to you, Baroness Kramer, that disguised remuneration contractors were used in HMRC, RCDTS and other government departments from 2016 right up until recently? By its own admission, it did not record anything prior to 2016, so it is likely that this happened before that, too.

Q23 **The Chair:** We are told there are 20 or 30 promoters. What many people might find bizarre, as Lord Forsyth was saying, is that many of these promoters seem to be swanning around in what are now called offshore financial centres on their yachts, and no one seems to be going after them.

Coming back to the point that was raised earlier, is HMRC really doing enough using its existing powers? I hear what is being said about advertising being improved, which really seems to me to be falling into the category of caveat emptor. That is fine and has its role to play, but what more should be done and can be done by HMRC, right now, to go after these individuals?

Keith Gordon: Are they doing enough? They are clearly not, because otherwise you would not be able to find the adverts on Google today. What should the Revenue do? It should probably contact all the end users, either through trade bodies or through the NHS nationally, to make it clear what is going on and ensure that people are given very clear guidance, not small print at the bottom of an engagement letter, that there are these schemes about and that the Revenue does not consider them to be effective. If it helps, the ones that I have heard are advertised I do not consider effective.

We need big, bold writing: "These don't work" or "We don't believe that these work. At the very least, you'll face an awful lot of financial trouble over a long number of years if you engage in them". Those big flashing lights need to be out there and communicated effectively to people before they become victims. Look at what happens with phishing emails about banks. You do not punish the victims. The Revenue needs to do more to show that it is protecting people before they become victims.

Andrew Chamberlain: I completely agree with what Mr Gordon has just said. In an ideal world, I would like to see scheme promoters prosecuted and quite possibly jailed. It gets difficult. I have had discussions with HMRC about this. You get into tricky territory. Do you seek to prosecute someone who is offering tax advice? Ultimately, the individuals are responsible for their own tax position, but I would like to see more done here.

Prior to this meeting, I tried to look around and see whether other territories around the world are tackling this issue a bit differently. I am afraid I did not get very far, but I was particularly interested in America, where we know that the IRS takes a pretty dim view of any kind of tax avoidance and people can land themselves in really big trouble over there. I cannot imagine that these kinds of scheme promoters would be allowed to survive and flourish over there. That is my view.

The Chair: Can I just press you on this, though? That is very interesting. Is it possible to draw up a law so that you could have criminal prosecutions against such individuals? Are we going to be whistling in the wind for that to happen? What is your view on this?

Andrew Chamberlain: I am not an expert. Mr Gordon might have a more informed view than I, but that is what I would like to see happen. I can see that you get into difficulty. Perfectly legitimate tax advisers would be terribly worried if they were offering tax advice to someone for which they could end up being prosecuted. That is the fine line that you would end up having to tread, and that makes it difficult.

Keith Gordon: I am not sure I can advise on that. It is outside my remit. There is one point that is worth bearing in mind. A lot of the discussion involves the question of what the tax law is. The biggest crime here is the mis-selling scandal. Tax advisers are not contract lawyers. There is a risk of certain people falling between the gaps when it comes to how we attack this kind of thing. Do we attack it as a question of tax or of consumer protection? The biggest problem is that all these people are offshore and probably outside the scope of the British courts.

Q24 **Lord Forsyth of Drumlean:** Mr Gordon has covered my point. Part of it is about mis-selling and perhaps about the regulation of people who give tax advice. I wonder whether that is the way forward on this.

Keith Gordon: Even if it is about the regulation of those who give tax advice, I am sure people could package it in a different way so that it does not become tax advice. It is a package based upon tax advice that is underlying it. Regulating tax advice itself might not be the solution.

Lord Forsyth of Drumlean: I have another frustration with this. We have heard evidence this afternoon of people encouraging NHS workers, even now, to get involved in these schemes, which is unbelievable. When we have talked to committees in the past about this and asked HMRC, "Why have you not gone to the employer? Why is the employer not liable for having entered these schemes?", it says, "We can't go after the employer, because they were not employed by the employer. They were employed under one of these schemes".

Is there not a bridge here that could create liability for local authorities, public bodies and people who have encouraged their employees to get involved in those kinds of schemes, often with the threat of redundancy as an alternative?

Keith Gordon: Under the IR35 proposals, which at the moment are due to come in for the private sector in 2021, there are definitely provisions that allow liabilities to move up the chain. They should definitely be considered. There are ways of achieving it. At the end of the day, it is the people up the chain who have had a lot of the savings that have attracted people to use particular agencies in the first place.

Yes, that would definitely be the stick to ensure that people complied, but the real message has to be to the public: "Don't get into this area". There has to be clear communication, and that is clearly not happening at the moment.

Baroness Kramer: I was going to make exactly the same point. Although the promoters may well be offshore, the engagers certainly are

not. There is surely some element of responsibility that could be established for the communication to contractors, even if they are not employees.

Gareth Parris: In the schemes I was involved in, some of my end clients were big financials and motor racing employers. They were never aware of what happened in the scheme apart from the end agency. They did not really want to know or care about that.

Baroness Kramer: They did not want to know.

Gareth Parris: They never asked the question. I do not think they were even aware.

Keith Gordon: I would add one warning. There is always the possibility that in the contractual arrangements there will be an indemnity borne by the worker to compensate for any tax paid further up the chain. One has to be careful to ensure that it does not fall back on the worker at the end of the day.

Q25 **Viscount Chandos:** Lord Forsyth raised the issue of regulation. Mr Gordon, you said that the problem with regulation is that there may always be a way round it. I accept that, but would it not be better at least to have the regulation? It helps prosecution, if it comes to that; it helps users to identify whether an adviser is validated. It seems anomalous that somebody can be sold a few hundred pounds or a single number of thousands of pounds of investment only by a regulated firm or individual, but advice on tax that amounts to tens of thousands of pounds is unregulated.

Keith Gordon: I can certainly hear the argument. I speak as a former council member of the CIOT, and I would like to think that membership of a regulated body itself should be sufficient without additional rules. That is my view. I would not want yet more regulation upon regulation, but the difficulty is that the culprits here are generally operating offshore. That might be a sufficient barrier to any successful prosecution.

Viscount Chandos: Onshore/offshore is an issue that affects the investment world as well. That has not been a barrier to pretty tough and effective regulation. Saying that it is too difficult is a trap to fall into. I do not know whether any of the other witnesses have a view on this. The only way you can go is to say that this has to be a regulated activity.

Blanche Zaph: I could not agree more. For a time, HMRC said, "You can either pay the loan charge or come to a settlement". At the time, the settlement was about half the amount, but nobody really understood anything. There have been so many delays; people have missed the opportunity to make a settlement, which is separate from the loan charge. In many cases, because of HMRC delays, they have missed bites of the cherry. There have been delays in paperwork and none of the amounts is confirmed. Everything is unclear and a mess.

Andrew Chamberlain: The umbrella companies should be regulated. They are not at the moment. There is an organisation called the Freelancer & Contractor Services Association, which is the industry policing itself and trying to regulate itself. If you have to use an umbrella company, that is a good place to start. Go to one that is FCSA-accredited. Actually, the Government should be doing more to regulate the umbrella companies. That would be a big help in all this.

The Chair: That is a very good point.

Q26 **Lord Monks:** As that previous discussion was going on, I was reminded of something that Lord Forsyth will know quite a lot about from his days as an employment barrister: the health and safety legislation. That has evolved to put the main responsibility on the main contractor. All the subcontractors have to comply with the rules set by the main contractor on health and safety issues, and increasingly in the construction industry on tax issues.

My particular question is more limited than that. It is about the voluntary restitution payments. In December 2020, it was reported that HMRC had yet to make any repayments for the voluntary restitution payments that no longer fell within the scope of the loan charge. I am interested in our witnesses' response to this. Is there anything they think HMRC should be doing to speed up the pace of the repayments?

Gareth Parris: LCAG members are reporting not being contacted by HMRC yet on this matter. HMRC has put the onus on the individuals to apply for refunds by creating a procedure with a refund application. In reality, it knows the people who are due the refunds, so should it not be proactively issuing refunds where they are legally due? It has also set a one-year time limit, after which the refunds will be withdrawn. It seems typical behaviour from HMRC: it is not actively refunding people and it has no intention of doing so. Taking into account that it has taken it three years to attempt to get a settlement for some people, it makes you wonder what it will be able to refund people in one year.

Blanche Zaph: I would only reiterate what my colleague Gareth has said. It is awful; it is absolutely dire.

Andrew Chamberlain: This should be automatic. If it is pre 2010, it should be as automatic as possible. I understand that there are complicated forms that people have to fill in and people are not being contacted. If they have paid it, but that law does not apply to that period now, they should be automatically repaid it.

Keith Gordon: I must admit that I am not surprised, unfortunately, by the Revenue's slow conduct. It pains me to say that. If there is a legal reason why it has to be the taxpayer who claims it, that does not stop the Revenue writing to the taxpayer and saying, "We think this is what you are entitled to. The law requires you to claim it, but all you need to do is send this back to us and we will process it within 14 days". If it is a legal obstacle, it can be overcome, where there is the willpower. Unfortunately,

everything I have seen relating to the loan charge suggests that the Revenue is trying to create as much friction as possible.

Q27 **The Chair:** My question is very simple. I asked this in the previous session as well. Why has the number of people HMRC is reporting as using disguised remuneration schemes increased between 2013 and 2018-19? Is there some underlying trend or reason for this, and/or is it because we are better at collecting data? Blanche, you are shaking your head.

Blanche Zaph: I just do not have that information. We try so hard to get statistics through freedom of information. We are fobbed off on a regular basis. I have absolutely no idea. HMRC banded about the number 50,000 originally, we think it is closer to 100,000 people affected. Then you take in the extended families and the people who are going to be bankrupted and have to be rehoused. We have done a survey and would be more than happy to send a copy of it to each member. I think that 50% or 55% of people may be looking to the state to support them after they have paid what is termed as not legally due.

The Chair: We would very much like to see that survey.

Keith Gordon: One possible explanation, as you suggest, is that the old data is unreliable, but there are two points I would like to add. First, the Revenue prefaced this latest disclosure as a success story, which I thought was a rather amazing way of explaining a 50% leap in the number of people participating in these schemes, especially given that the stated objective of the loan charge was an end to these kinds of schemes.

Secondly, it is worth bearing in mind that taxpayers were required in September 2019 to disclose their potential liability to the loan charge. Either not enough people have complied with their legal obligations of over a year ago or the Revenue's data is still incorrect. I cannot say what the cause of the problem is, but the statistics show that there is at least one problem somewhere, if not more.

Gareth Parris: In answer to Mr Gordon's point, I have personally given HMRC all my loan details multiple times. It still cannot get it right and it takes for ever to come to some kind of calculation, which then needs to be discussed and have interest added on and taken off. It is just ridiculous.

Andrew Chamberlain: On your question, Lord Bridges, in 2017 the rules on IR35 in the public sector changed. That meant that there was an increased usage of umbrella companies. People who were contracting and being paid by their own limited companies now had to go into umbrella companies. Many of them were perfectly compliant and full tax was being deducted as it should have been, depending on your view of the IR35 rules, but some of them would have been these loan scheme arrangements. That could have prompted a spike in the use of the schemes.

What worries us is that in April next year, when the private sector rules come in, we will have the same problem. We know that these schemes are still out there. Thousands of people are going to be pushed into umbrella companies. They are not well regulated, and some of those people will unfortunately fall into the hands of these scheme promoters. That is a big concern for us.

The Chair: You are saying that IR35, which this committee also has quite strong views on, may contribute to an increase in DR schemes.

Andrew Chamberlain: Yes, I think it will. It will certainly increase the number of people using umbrella companies. Most of them will be compliant.

Mr Gordon referenced the transfer liability rules. This is what HMRC has put into the IR35 rules to try to prevent these schemes exploding out of control, but I feel that in some instances that people will end up saying, "I have to choose an umbrella. This one over here is telling me that I can take home 85% of my pay. Brilliant, I'll go with that". You are going to get back into this problem. "They're telling me that it's perfectly legal, because it's not a loan scheme. This one is using a share scheme". It will be something weird and wonderful.

I believe HMRC would deem it all to be disguised remuneration and people will end up in hot water because of this. The IR35 rules are coming in too soon. We should be regulating umbrella companies first before we put these IR35 rules in place.

Q28 **Lord Forsyth of Drumlean:** I will try to put this question reasonably speedily. There has been quite a lot of criticism of HMRC. I am quite struck by how long it took Mr Gordon to get information and how long, looking at some of the cases we have heard about, it takes HMRC to reply to letters. It is inefficient. In its defence, I wonder to what extent Ministers are to blame for asking HMRC to collect as much money as possible while not giving it the resource it needs to do its job. Has a culture been created that is all about getting as much money as possible, prior to this year, to pay the deficit down? Has it been handed an impossible task?

I am quite struck by the way in which it constantly refers to the tax gap and the need to close the tax gap. I wonder whether there is a strategic or a cultural problem here, which really starts with what Ministers in the Treasury are saying to HMRC.

Keith Gordon: That is definitely a major part of the problem, but it is not just the reduction in numbers in order to reduce the deficit. The problem started at around the time of the merger of the two departments in 2005, long before the last financial crisis hit.

Yes, there is definitely a problem in that sense. There is a culture within the Revenue, as you have said, to get as much money as possible. There is not much sympathy for anyone who considers themselves to be an entrepreneur. There is a feeling in certain part of the Revenue that

anyone who is not working as an employee, and possibly even in the public sector, has somehow sold their soul to the devil and deserves what they get. That is a slightly colourful way of describing it, but that is certainly an impression one gets.

If we go back to another point, IR35 is possibly the original cause of the entire problem. Whenever Parliament enacts anti-avoidance legislation, it has to consider the likely and possibly less likely consequences. If it is driving taxpayers into a risk of investigation and you are a one-person business, you can defend yourself, but it will take three or four months of your life full time or a year part time. You would rather just be earning some money for your business. There are some huge problems underlying the entire tax system. This is just at the tip of the iceberg.

Gareth Parris: Further to what Lord Forsyth was saying, the NC31 debate was the classic example of that. The Treasury misled Members of the House about the actual effects of the Bill.

The Chair: Thank you all very much indeed. I am sorry we have gone on a bit longer than scheduled. We are very grateful for your evidence both oral and written. With that, we will close today's proceedings. Thank you very much indeed.