

MR E. MARTIN - WRITTEN EVIDENCE (DFE0012)

Draft Finance Bill 2020-2021 inquiry

I am submitting this evidence as someone who has been affected by both tax avoidance schemes, HMRC's inaction over a prolonged period and the implementation of retrospective legislation to cover these institutional failings.

I have recently reached a settlement with HMRC before submitting to the Loan Charge, committing to repay over £600k over the next 12 years, despite having followed the advice of regulated Chartered Accountants.

1. The existing powers of HMRC seem to unfairly target the users of tax avoidance schemes, who have followed the advice of regulated financial professionals – people who are trusted to keep the taxpayer within the law.

Retrospective legislation, such as the Loan Charge, effectively denies the taxpayer the right for a court determine whether schemes are actually effective. HMRC regularly cites that they 'don not believe these schemes work' but have not had that assertion tested in a court of law – which is surely the right of taxpayers.

To date ALL action by HMRC has sought to target the taxpayer and singularly fails to recognise the role of the scheme designers or promoters, who actively encouraged people to enter these schemes as a legal way to manage their tax affairs.

Changes to the Finance Bill 2020 look to target promoters PROSPECTIVELY despite HMRC being inactive for over 20 years. MP Jesse Norman is on public record defending this approach stating that promoters had 'done nothing wrong/illegal'.

I fail to understand why those encouraged into schemes by Chartered Accountants and Regulated Tax professionals should be targeted retrospectively, whilst promoters are given a 'hall pass'.

2. HMRC communications clearly haven't been effective over the past 20 years as thousands have used these schemes.

This situation is further compounded by the role of the promoters. When challenged by HMRC the promoters exert huge efforts to reassure users that the schemes are robust, defensible and perfectly legal. I personally have attended dozens of events/webinars etc. where promoters have continued to [very rationally] explain to users that the schemes are perfectly legal and that users have nothing to worry about.

Where are these promoters now? Hiding in plain sight! Some of the biggest facilitators are Tory Party donors and one is even marrying a Tory Peer, yet ZERO action has been taken against them.

The use of the Behavioural Insights [Nudge Unit] in producing more and more threatening communications has affected the mental and physical health of many over some years, and has resulted in at least 7 suicides. This cannot be acceptable. Only yesterday it was announced that new laws are to be introduced forcing lenders to tone down the language used following concerns over the mental health aspects.

<https://www.gov.uk/government/news/new-debt-letters-rules-will-support-people-in-problem-debt>

The irony is blinding when you consider the role of the BI Team is to do precisely this – cajole people into changing their behaviour through the use of overt threats and reference to social norms.

At one point the BI team suggested the names of people accused of tax avoidance would be published in a bid to shame people into conceding - despite no-one being heard in a court of law or tax tribunal.

Does the sub-committee see this as an effective way of communicating?

3. Safeguards between HMRC and taxpayer – there are NONE

The Loan Charge is a blunt instrument to FORCE people into settling unresolved tax disputes.

The settlement process REQUIRES you to admit to being a tax cheat and taking NO legal action should the schemes be found robust in later years.

Failing to settle allows HMRC to issue Accelerated Payment Notices [APNs], which is a payment on account pending a court decision. Failure to pay the APN leaves the taxpayer open to bankruptcy proceedings.

So I fail to understand where ANY safeguard exists here. HRMC is effectively judge, jury and executioner: they determine a scheme doesn't work, are not required to prove that fact, introduce retrospective legislation to force settlement. If you settle you waive your rights to legal redress. If you refuse to settle HMRC bankrupt well before you have a chance to get near a court.

Where is the safeguard in this system?

To illustrate: a review was undertaken by Sir Morse where schemes before 2010 were deemed out of scope of the Loan Charge as 'the law wasn't clear before 2010'.

I paid a £90k APN in relation to a 2009 scheme, which HMRC refuses to refund or off-set against my £600k settlement [which includes over £100k of forward interest and penalties] the rationale being HMRC still believe the scheme may 'not work' and 'may litigate in the future'.

Where is the safeguard here?

HMRC's approach is punitive and a pursuit of MAXTAX – I will be paying approaching £200k more than I ever received from the schemes I entered. Yet to avoid bankruptcy I have to waive my rights to legal redress in the future.

Please explain to me where, in any other walk of life, a Government department has the power to force people to waive their legal rights?

Who is overseeing this behaviour? The answer is no-one and so there is no safeguard in place to prevent overreach by HMRC. Treasury ministers are too busy trying to defend the 'policy' than actually scrutinise it to determine whether it is fair and proportionate.

I am one of the 'fortunate' ones in that I may [assuming the economy, my business or my health doesn't fail] be able to complete the settlement agreement reached with HMRC a few short years before I retire. But many others will not be in this position. They will be rendered homeless, bankrupt and burdens on the state having been honest, hard-working people. Their families will be divided and the impacts will be felt for 2 generations at least.

All this despite hundreds of MPs expressing concerns over the Loan charge and the behaviour of HMRC.

NOT once [not on a singular occasion] has Mel Stride or his successor Jesse Norman actually reviewed the actions of HMRC. Their policy has to be to defend HMRC at all cost, to evade scrutiny regardless of the evidence presented to them, and actually avoid Parliamentary scrutiny whenever the situation arose. They have failed to attend House of Lords Economic Committee sessions when invited to answer questions; sessions where HMRC officials have been proven to have lied, where leading tax barristers' advice has been ignored.

The 'independent' review ordered by then PM Theresa May was found, under a FOI request to have been undertaken largely by HMRC.

The 'independent' review ordered by Boris Johnson and conducted by Sir A Morse was staffed by HMRC officers who [again under FOI request] were found to have an uncomfortably cosy relationship with the review team. A review that refused to hear evidence from external experts.

So in answer – NO there are no sufficient safeguards now or being proposed to ensure there is an appropriate balance struck between the tax payer and HMRC. The whole system is weighted in favour of HMRC, is designed to 'punish' taxpayers and avoid both the scrutiny of the courts and Parliament.

It is a very sad day for taxpayers when a government department is found to be above the law. That day is now.

7th October 2020