

## HMRC fails to convince Lords on legal justification for Loan Charge



In a widely anticipated [follow-up session on the Loan Charge](#) by the Lords Economic Affairs Committee, HMRC failed to convince the Committee's members on the legal justification for its highly controversial retrospective tax that has resulted in thousands of freelancers being pushed to the brink of bankruptcy. The members also poured scorn on HMRC's poor record of cracking down on rogue umbrella companies which are, [according to the BBC](#), still promoting schemes.

The Committee directed questions to HMRC's Head of Counter Avoidance, and also the First Permanent Secretary and Chief Executive of HMRC, Jim Harra.

The Committee's session also followed a [recent open letter to the Prime Minister](#) and Chancellor signed by 76 Parliamentarians urging for a "fair resolution" to the Loan Charge debacle.

### Missing legal justification for the Loan Charge

Harra was [recently under fire by campaigners](#), after an email surfaced via a Freedom of Information request which described his unsuccessful attempt to secure legal analysis backing HMRC's policy. His email stated, "In recent months I have repeatedly tried to obtain legal analysis to understand the strength of our claim with very little success."

The highly respected tax barrister [Keith Gordon of Temple Tax Chambers](#) commented on this [to Computer Weekly in April this year](#), and said "It demonstrates that the foundations of the loan charge were spin and HMRC's hopes rather than any substantive legal opinion, even one coming from HMRC's own lawyers."

After being questioned on this by Lord Forsyth, Mr Harra claimed that what he had said in the email had been overplayed by campaigners, whom he said were looking for new angles all the time.

Steve Packham, Spokesperson for the [Loan Charge Action Group](#), who released a statement after the meeting said: "The members of the Committee were right to press Jim Harra on his email where he clearly admits that he couldn't find legal analysis to back up HMRC's strategy of pursuing individuals and Baroness Kramer forced an admission that HMRC have no such opinion."

### Schemes are still running, fueled by umbrellas and the IR35 Off-payroll Reforms

Baroness Kramer also expressed the Committee's longstanding concerns about the multiplicity and growth of umbrella companies, stating that there was unlikely to be a single contractor introduced to one of the schemes who was not introduced either by an umbrella company or a promoter brought to them by an umbrella company.

Kramer also referred to the recent Off-payroll arena, that has led to a creation of a whole umbrella industry on a scale never been known

before, whilst companies are anxious not to be responsible for determining to whom IR35 applies, and therefore view umbrellas as providing the necessary buffer between them and HMRC that they wish for.

Kramer said "Given that umbrella companies have been so deeply implicated in much of the abuse, I'm trying to get to the bottom of what you are actually doing, and do you recognise the Off-payroll consequences are essentially firing up this industry, and are essentially quite perilous," and asked HMRC what protections they were putting in place to deal with that.

HMRC admitted that lots of scheme users had accessed them through umbrella companies, and went on to admit that their estimates were that 2-2.5% of contractors had used disguised remuneration. HMRC said that "whilst there were clearly umbrella companies involved in disguised remuneration, there were also a lot of compliant umbrella companies providing that PAYE service."

HMRC also reinforced the Government's recent announcement to introduce a single enforcement body in this area.

Dave Chaplin, CEO of ContractorCalculator claims that this is all empty rhetoric, not backed by specific action. "The umbrella market has become badly affected with non-compliant operators as a result of the Off-payroll IR35 reforms in April this year, and HMRC are playing a losing game of Whac-A-Mole in trying to shut them down."

Chaplin reiterates that: "The dodgy schemes continue to operate and are getting away scot free after robbing the taxpayer, and HMRC fuel the market by going after the victims, not the perpetrators."

## Are HMRC running out of reasons for the Loan Charge?

Chaplin suggests that HMRC now appear to have run out of reasons to justify their controversial Loan Charge: "There's a saying – when you're in a hole, stop digging. HMRC continue to dig, but today finally hit the concrete floor of incontrovertible facts – that the Loan Charge breaches the rule of law."

Chaplin continues: "The Loan Charge is now fully exposed as a highly damaging retrospective tax designed to bulldoze through longstanding taxpayer protections, sending thousands of victims of unscrupulous operators into bankruptcy. And, all forced through Parliament by HMRC and Ministers based on misleading information. It is a massive scandal of their own making."

Packham wants more: "It's high time that there is a proper investigation into the chronic disinformation peddled by HMRC over the Loan Charge, something that the Loan Charge and Taxpayer Fairness APPG have consequently called for and something that is a stain on the UK civil service".

## Will the Loan Charge be cancelled?

But will things change? This may require intervention from Prime Minister Boris Johnson, who appears to have adopted a confusing position of being both for and against the Loan Charge. At a hustings event in June 2019 he stated "It seems superficially unjust that they should be retrospectively pursued", whereas more recently at Prime Ministers Questions on 7th July 2021, after a question on the Loan Charge by John McNally MP, [the Prime Minister said](#) "I think that the line taken by the Treasury, I am afraid, is right on this."

This position is backed by the Chair of the Treasury Select Committee, Mel Stride MP, who was Financial Secretary of the Treasury when the Loan Charge was introduced, who appears to be entirely disinterested in examining the matter further. When [quizzed on the matter on LBC radio by Nick Ferrari in March 2021](#), Ferrari put it to him that he must be aware of the seven suicides linked to the loan charge and others who were being financially ruined, to which Stride responded that he didn't agree the measure applied retrospectively and that schemes were eroding the tax base.

"It's hardly surprising that Mr Stride isn't rushing to have his own homework remarked. The real problem here does not sit with the scheme users, it's the scheme providers," stresses Chaplin. "It's appalling that HMRC and Ministers are continuing to blame the taxpayers for the misdeeds of others. All this serves to do is encourage yet more unscrupulous providers to enter the market and prey on unsuspecting victims."

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