

Loan Charge APPG report calls on Government to address contractor exploitation



The [Loan Charge](#) All-Party Parliamentary Group has called on Government to take urgent action to address the exploitation of contractors via supply chain non-compliance, in a revealing new report.

'[How Contracting Should Work](#)' concludes an inquiry which sought to understand the reality of contracting in the UK, the different ways of structuring such work, and the issues resulting in the uptake of tax avoidance schemes.

Unfortunately, non-compliance within contractor supply chains, dubbed the 'Wild West' by some respondents, was found to be largely at fault for the latter. Meanwhile, the report observes many contractors are bearing the brunt, inheriting employer's tax liabilities and risk through unwitting engagement in disguised remuneration schemes while being deprived of rights such as holiday pay.

"There are some strong recommendations and worrying observations in this report, and lots more work needs to be done to ensure the fair and proper treatment of contractors," comments ContractorCalculator CEO Dave Chaplin.

"Before any legislation is passed, which won't happen overnight, the supply chain should seek to introduce much better transparency and improved processes to ensure workers are given full rights if they are considered 'deemed employees' under the new Off-Payroll tax rules."

'Reckless' Off-Payroll rollout intensifies tax avoidance

The Loan Charge APPG was originally set up in 2019 to examine the reasons behind engagement in arrangements subject to the controversial Loan Charge. Uptake of these schemes spiked following the 2000 introduction of the IR35 legislation, as many contractors sought engagement models that wouldn't subject them to their employer's NI liabilities.

Unsurprisingly, the Loan Charge APPG's report observes that the rollout of IR35 in its latest iteration, the Off-Payroll working rules, has sparked a new wave of non-compliance. With many recruitment agencies and end-clients inserting payroll intermediaries into their supply chains as a means of negating their Off-Payroll compliance obligations and risk, tax avoidance schemes operating under the guise of 'umbrella companies' have proliferated throughout the market.

This trend, the report observes, was evident following the 2017 public sector reform, yet multiple warnings went unheeded by Government throughout the consultation phase for the private sector changes, leading the Loan Charge APPG to conclude:

'Considering HMRC and the Treasury were well aware of the proliferation of loan-based schemes, to press ahead with a policy rollout when they had been specifically told it would lead to a similar problem was, in our view, reckless.'

"The report shows the confusion as to how professional contract and freelance workers are supposed to operate. This has been driven to a

great extent by the deeply flawed 'IR35' legislation and the associated Off-Payroll working rules," commented Baroness Kramer, vice-chair of the Loan Charge APPG, whose report reached an uncompromising conclusion, stating:

'Instead of denying this reality, the Treasury should seek to implement legislative changes that create tax certainty for freelance workers which are appropriate and fair.'

Lawless providers tighten grip on umbrella market

Through the Off-Payroll legislation, HMRC appears to be creating its own problems, which only look set to worsen unless significant action is taken. Whereas the Off-Payroll legislation has opened the door for tax avoidance scheme providers, the financial advantages gained from non-compliance has enabled many of these firms to tighten their grip on the market.

With insufficient tax payments meaning such providers withhold more money than their compliant counterparts, many have used their wealth to their advantage. The Loan Charge APPG notes that much of this money is being spent on 'kickbacks' paid to recruiters in exchange for a position on a preferred supplier list (PSL) or a recommendation to a potential client, adding: *'A fee of £30k is not uncommon.'*

Other less visible incentives, the report notes, have included *'fitted kitchens, paid for luxury holidays and pre-paid credit cards for recruitment agency owners or directors.'* Conversely, it adds: *'Compliant umbrella companies who refuse to participate in these agency 'kickbacks' claim that they lose business as a result and are being forced out of the market.'*

As a result, the Loan Charge APPG notes that agencies are in some cases pushing contingent workers into using a specific umbrella company. With the report consequently observing that many contractors will have engaged in disguised remuneration schemes having been issued a 'take it or leave it' offer by their agency, the fact that the Loan Charge holds contractors liable for unpaid tax, penalties and interest seems particularly unfair.

Contractors bear brunt of supply chain non-compliance

Unfortunately, the malpractice highlighted throughout the report isn't limited to tax avoidance schemes, with an overall lack of transparency blamed for numerous other umbrella company indiscretions.

These include the unlawful deduction of employer's taxes from contractor pay, and the withholding of holiday pay from contractors, with some umbrella companies going as far as refusing to pay Covid furlough payments to contractors unless they waive their rights to holiday pay.

As Chaplin highlights, the outcome for many contractors is zero-rights employment: "Contractors deemed 'inside IR35' are in an untenable position in that they are working via PAYE but have none of the rights that come with permanent employment.

"It's time to finally overhaul the discredited IR35 legislation, which everyone knows doesn't work. Instead, Government needs to find with a way to properly recognise contracting and freelancing in the tax system and ensure people are either classed as self-employed or as employees with full rights and benefits."

Extent of supply chain non-compliance remains unknown

Though tax avoidance scheme promoters and non-compliant supply chain partners are rightfully cast as the key villains of the piece, a potential negative fallout from the report is that compliant organisations may be tarred with the same brush.

"There are of course concerns about some umbrella companies not acting in the best interests of their contractors, but it's certainly not all of them," stresses Chaplin. "It is, however, very difficult to determine exactly how many are playing by the rules."

Indeed, Neil Carberry, CEO of the Recruitment & Employment Confederation (REC), told the report that of roughly 30,000 UK agencies, only 3,300 are REC members. Meanwhile, Freelancer and Contractor Services Association (FCSA) CEO Phil Pluck observed that the organisation has 63 members out of an estimated 800 UK umbrella companies.

Ultimately, the report acknowledges that with few firms subject to any compliance standards *'the current system of voluntary regulation and accreditation does not stop malpractice in the supply chain'*, adding: *'The different parties in the supply chain all accept there are fundamental issues, but they are all pointing the blame at each other.'*

What can be done to prevent supply chain non-compliance?

The Loan Charge APPG's firm conclusion is that regulation is desperately needed. While industry bodies are urged to do more to condemn malpractice, Government intervention is clearly necessary. As such, the report suggests several possible measures that Government can impose to provide supply chain clarity and prevent exploitation, including:

- Making it unlawful for contractors to be coerced to opt-out of the Conduct of Employment Regulations
- Making it unlawful for agencies to receive 'kickbacks' from umbrella companies
- Outlawing the withholding of holiday pay
- Making quoting PAYE contract rates for 'inside IR35' engagements a statutory obligation
- Making it mandatory for intermediaries and agencies to disclose all fees and costs, in addition to providing a Key Information Document (KID) to workers

The report also proposes an overhaul of the legislative landscape in the form of a review and amendment to IR35, which the Loan Charge APPG says has *'ironically muddied the waters and unintentionally made it harder to define contracting and freelancing'*. A revised structure, the report notes, should adopt the [Taylor Review](#) recommendation that employment status be aligned for tax and employment law purposes.

HMRC urged to act now to protect contractors

"I think we are a long way away from full regulation, because the situation is complex," notes Chaplin. "What doesn't help is the fact that there are considerable rewards available for non-compliant agencies and umbrella providers, but without any financial penalty. Instead, the worker either ends up short-changed, or in the worse case with a future crippling tax bill."

The damaging impact of the Loan Charge is another urgent issue that the Loan Charge APPG calls on Government to urgently address by nipping tax avoidance in the bud. By devoting resources to properly link and reconcile employment intermediaries' quarterly data with Real Time Information (RTI) submissions, the report argues that HMRC could take a simple yet effective step in clamping down on tax avoidance schemes.

"There's no doubt that HMRC could be making better use of current data to quickly spot where rogue providers have entered the supply chain," says Chaplin. "Think about the speed with which Government was able to put in systems changes for Covid. It's difficult to see what barriers there are for something this simple that would protect the livelihoods of tens of thousands of workers that are currently prey to the grifters circling the market."

Published: 10 April 2021

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